

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

DEPARTMENT: City Development Department

AGENDA DATE: Regular Agenda – July 31, 2012

CONTACT PERSON/PHONE NUMBER: Mathew McElroy, Director, City Development Department, 541-4193

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

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

Discussion and action on a Resolution that the City Manager be authorized to execute a First Amendment to Chapter 380 Economic Development Program Grant Agreement (Impact Fund) between the City of El Paso and Medical Center of the Americas Foundation (the "Applicant"), in relation to the Applicant's undertaking of an economic development project, amending certain default provisions regarding the commencement of construction of the Nursing School Facility by Applicant. (All Districts) [City Development Department – Mathew McElroy, Director 915-541-4193]

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 proposing an amendment to a Chapter 380 Economic Development Program Agreement ("the Grant Agreement") signed on February 7, 2012. The Grant Agreement allows the applicant to develop a biomedical cluster within the Medical Center of the Americas area. As part of the biomedical cluster the Applicant recently entered into a Nursing School Facility Agreement ("Funding Agreement") between Texas Tech University Health Sciences Center ("TTUHSC") and Texas Tech University System ("Tech System"). Per the Funding Agreement the Applicant has agreed to make an award in the amount of \$11,016,000.00 ("Award"), payable in eighteen annual installments of \$612,000.00.

The Applicant is proposing to fulfill the Annual Installments specified in the Funding Agreement with a portion of the Total Grant Amount in the Grant Agreement. To assure that the Annual Installments are made without delay or suspension, the Applicant is requesting that the City amend the Grant Agreement as follows: upon commencement of construction of the Nursing School Facility, the City will not suspend or terminate payments to the Applicant because of a Special Event of Default that is unrelated to the Nursing School Facility.

PRIOR COUNCIL ACTION:

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

Yes. City Council previously approved a Chapter 380 Economic Development Program Agreement on February 7, 2012.

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?

El Paso Electric Franchise Fee

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager



MEMORANDUM

DATE: July 31, 2012
TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager
FROM: Mathew McElroy, City Development Director
SUBJECT: First Amendment to Chapter 380 Agreement-Medical Center of the Americas Foundation

On February 7, 2012, City Council approved a Chapter 380 Economic Development Program Grant Agreement (“the Grant Agreement”) with the Medical Center of the Americas Foundation (“Applicant”) which is related to the development of a biomedical cluster. As part of the development of the biomedical cluster, the Applicant entered into a Nursing School Facility Agreement (“Funding Agreement”) between Texas Tech University Health Sciences Center (“TTUHSC”) and Texas Tech University System (“Tech System”). Per the Funding Agreement the Applicant has agreed to make an award in the amount of \$11,016,000.00 (“Award”), payable in eighteen annual installments of \$612,000.00 each (“Annual Installments”) beginning on December 31, 2012 and continuing regularly and annually on the same date thereafter until and including December 31, 2029.

The Applicant is proposing to fulfill the Annual Installments specified in the Funding Agreement with a portion of the Total Grant Amount in the Grant Agreement. To assure that the Annual Installments are made without delay or suspension, the Applicant is requesting that the City amend the Grant Agreement as follows: upon commencement of construction of the Nursing School Facility, the City will not suspend or terminate payments to the Applicant because of a Special Event of Default, which is unrelated to the Nursing School Facility.

Staff is recommending approval of the First Amendment of the Economic Development Program Agreement as the development of a biomedical cluster is anticipated to encourage increased economic development in the City,

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



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S E R V I C E S O L U T I O N S S U C C E S S

provide significant increases in the City's property tax revenues and create new quality jobs within the City of El Paso.



Mayor

John F. Cook

City Council

District 1

Ann Morgan Lilly

District 2

Susie Byrd

District 3

Emma Acosta

District 4

Carl L. Robinson

District 5

Dr. Michiel R. Noe

District 6

Eddie Holguin Jr.

District 7

Steve Ortega

District 8

Cortney Carlisle Niland

City Manager

Joyce A. Wilson



Two Civic Center Plaza
El Paso, TX 79901
(915) 541-0000

RESOLUTION

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

That the City Manager be authorized to execute a First Amendment to Chapter 380 Economic Development Program Grant Agreement (Impact Fund) between the City of El Paso and Medical Center of the Americas Foundation (the "Applicant"), in relation to the Applicant's undertaking of an economic development project, amending certain default provisions regarding the commencement of construction of the Nursing School Facility by Applicant.

APPROVED this _____ day of _____ 2012.

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:

Mathew S. McElroy, Director
City Development

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

This First Amendment (the “*First Amendment*”) to Economic Development Program Grant Agreement dated February 7, 2012 (the “*Grant Agreement*”) 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 non-profit 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, the City and Applicant entered into the Grant Agreement for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso as specified therein; and

WHEREAS, Applicant has entered into a Nursing School Facility Funding Agreement between Applicant and Texas Tech University Health Sciences Center (“*TTUHSC*”) and Texas Tech University System (“*Tech System*”), a copy of which is attached hereto for acknowledgment purposes as Exhibit A (“*Funding Agreement*”), pursuant to which Applicant has agreed to make an award in the amount of \$11,016,000.00 (“*Award*”), payable in eighteen (18) annual installments of \$612,000.00 each (“*Annual Installments*”) beginning on December 31, 2012 and continuing regularly and annually on the same date thereafter until and including December 31, 2029, in consideration for the agreement of TTUHSC and the Tech System to construct within the MCA Area the TTUHSC Gayle Grieve Hunt School of Nursing (the “*Nursing School Facility*”); and

WHEREAS, in order for Applicant to proceed with the Nursing School Facility, TTUHSC and the Tech System require Applicant to amend the Grant Agreement with the City to specify that upon commencement of construction of the Nursing School Facility and prosecution of such construction to completion in accordance with the terms of the Grant Agreement, the portion of the Total Grant Amount under the Grant Agreement that Applicant intends to use to fulfill its obligation to pay the Annual Installments relied upon by TTUHSC and the Tech System to fund the construction of the Nursing School Facility will not be suspended or terminated by reason of a Special Event of Default by Applicant under the Grant Agreement unrelated to the Nursing School Facility; and

WHEREAS, Applicant has requested that the Applicant and the City amend the Grant Agreement to specify that upon commencement of construction of the Nursing School Facility and prosecution of such construction to completion as required by the terms of the Grant Agreement, the portion of the Total Grant Amount designated by Applicant in its Funding Agreement with TTUHSC and the Tech System, for payment of the Annual Installments to TTUHSC and the Tech System will not be suspended or terminated because of a Special Event of Default unrelated to the Nursing School Facility.

NOW, THEREFORE, the parties agree as follows:

Sections 9.E and 9.F of the Grant Agreement are deleted in their entirety and the following sections are substituted in place thereof:

E. Payment Suspension in Response to a Special Event of Default.

(1) Only upon the occurrence and continuance of a Special Event of Default under Section 9D(1) or 9D(2) hereof, the City may by ninety (90) days prior written notice (“*Notice of Payment Suspension*”) delivered to the Applicant suspend payment of up to the Total Grant Amount until such Special Event of Default is cured to the City’s reasonable satisfaction. Notwithstanding the foregoing, upon commencement of construction of the Nursing School Facility and prosecution of such construction to substantial completion, in accordance with the terms of this Agreement, the City will not suspend payment of that portion of the Total Grant Amount that Applicant is obligated to pay to TTUHSC and the Tech System as Annual Installments, as specified in their Funding Agreement, to which the City is not a party. No section or provision in this Agreement shall confer any rights or remedies upon any person other than the City and the Applicant and their respective successors and permitted assigns.

(2) During any such suspension of the Grant, the Applicant shall, to the extent reasonably possible under its other contractual obligations, suspend, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement and shall cease to incur costs thereunder unless Applicant has other funds with which to make such payments. The Applicant agrees and understands that the City will not be liable to Applicant or to third parties for any costs incurred subsequent to receipt of a Notice of Payment Suspension.

F. Termination if Special Event of Default Not Cured. Upon the occurrence and continuance of a Special Event of Default and a suspension of the Grant pursuant to Section 9E(1) above for a minimum of one hundred eighty (180) days, the City may, upon thirty (30) days prior written notice delivered to the Applicant, terminate this Agreement, provided, however, that if construction has commenced, is being prosecuted, or has been substantially completed with respect to the Nursing School Facility, then the City will not terminate this Agreement with respect to the portion of the Total Grant Amount which Applicant has designated for payment of the Annual Installments under its Funding Agreement for construction of the Nursing School Facility. In such event, rather than terminating this Agreement, the City will reduce the Grant hereunder to an amount which will allow the Applicant to continue to pay that portion of the Grant designated for the Nursing School Facility.

{Signature blocks continued on next page.}

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2012.

CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Mathew McElroy, Director
City Development Department

**MEDICAL CENTER OF THE AMERICAS
FOUNDATION**

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

**MEDICAL CENTER OF THE AMERICAS
FOUNDATION**

By: _____
Name: Rodolfo Mata
Title: Chairmain of the Board

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was executed before me on the ____ day of _____, 2012, by Rodolfo Mata, as Chairman of the Board of Medical Center of the Americas Foundation, a Texas non-profit corporation, on behalf of non-profit corporation.

Notary Public, State of Texas

My Commission Expires:

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was executed before me on the ____ day of _____, 2012, by Emma W. Schwartz, as President of Medical Center of the Americas Foundation, a Texas non-profit corporation, on behalf of non-profit corporation.

Notary Public, State of Texas

My Commission Expires:

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was executed before me on the ____ day of _____, 2012, by Joyce Wilson, as City Manager of the City of El Paso, on behalf of the City of El Paso.

Notary Public, State of Texas

My Commission Expires:

NURSING SCHOOL FACILITY FUNDING AGREEMENT

This Nursing School Facility Funding Agreement (“*Agreement*”) is dated to be effective as of June 20, 2012 (“*Effective Date*”) by and between (i) MEDICAL CENTER OF THE AMERICAS FOUNDATION (“*MCA*”), (ii) TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER (“*TTUHSC*”), and (iii) TEXAS TECH UNIVERSITY SYSTEM (“*Tech System*”). TTUHSC and Tech System are referred to collectively herein as “*Tech Parties*.”

RECITALS:

WHEREAS, MCA and the City of El Paso (the “*City*”) entered into that certain Economic Development Program Grant Agreement of the City of El Paso (Medical Center of the Americas-Impact Fund Project) dated February 7, 2012 (“*Program Grant Agreement*”) pursuant to which the City has determined to grant funds to MCA for the purpose of promoting local economic development and enhancing business and commercial activity; and

WHEREAS, the Program Grant Agreement contemplates that MCA will use funds received by MCA pursuant to the Grant Agreement to effect various building projects within the “*MCA Area*,” an area within the City encompassing approximately 440 acres, located south of Interstate 10, north and west of Paisano Drive and east of Boone Street and currently anchored by the University Medical Center of El Paso and the Texas Tech University Health Sciences Center Paul L. Foster School of Medicine; and

WHEREAS, one of the projects contemplated under the Program Grant Agreement is the use of a portion of the Grant received by MCA under the Program Grant Agreement to facilitate the development and construction of a new building within the MCA Area to house the TTUHSC Gayle Grieve Hunt School of Nursing (“*Nursing School Facility*”); and

WHEREAS, MCA desires, under the terms and conditions set forth herein, to make a grant, to be paid out of the Grant received by MCA under the Program Grant Agreement, to TTUHSC to fund and/or help finance the construction of the Nursing School Facility within the MCA Area.

NOW THEREFORE, the Parties agree as follows:

1. **Capitalized Terms.** Capitalized terms used in this Agreement and not otherwise defined shall have the same meaning ascribed to such terms in the Program Grant Agreement, or, if not defined in the Program Grant Agreement, the meaning ascribed in Section 9(n) hereof.

2. **Amount of Award; Method of Payment.** The total amount of the grant is \$11,016,000.00 (the “*Award*”), payable in eighteen (18) annual installments of \$612,000.00 each (“*Annual Installments*”), beginning on December 31, 2012 and continuing regularly and annually on the same date thereafter until and including December 31, 2029, subject, however, to the terms of the Program Grant Agreement and satisfaction of the Conditions of the Award, as specified in Sections 4 and 5 herein.

3. **Purpose of Award; Restrictions.** The purpose of the Award is to help fund and/or finance the construction of the Nursing School Facility (“*Restricted Purpose*”). The Award shall be used for the Restricted Purpose only, and for no other purpose without the prior written consent of MCA.

4. **Award Subject to Terms of the Program Grant Agreement.** MCA and the Tech Parties acknowledge that the source of funding for the Award is the Grant received by MCA pursuant to the Program Grant Agreement, a true and correct copy of which is attached hereto as Schedule 1, and the

ability of MCA to pay the Annual Installments as contemplated herein is conditioned upon the receipt by MCA of payments of the Grant from the City pursuant to the Program Grant Agreement. MCA shall use commercially reasonable efforts to (i) comply with all of the covenants and obligations of MCA under the Program Grant Agreement, and (ii) take actions as may be necessary or required to keep the Program Grant Agreement in effect, but (subject to the obligations of MCA to use commercially reasonable efforts to so comply and take such actions), the obligations of MCA under this Agreement are conditioned upon receipt by MCA of payments from the City pursuant to the Program Grant Agreement sufficient to make the Award hereunder. Without limitation on the foregoing, the Tech Parties acknowledge that the obligations of the City under the Program Grant Agreement are subject to annual appropriation by the City.

5. Obligations of the TTUHSC Parties. The Tech Parties acknowledge that the Program Grant Agreement requires commencement and completion of construction of the Nursing School Facility by certain outside dates as specified in the Program Grant Agreement, and relocation of the TTUHSC nursing school program currently based at another facility in El Paso, Texas to the Nursing School Facility. The Tech Parties acknowledge that the obligations of MCA to make the Award hereunder are conditioned upon the following (the "*Conditions of the Award*"):

- (i) the Tech Parties shall commence construction of the Nursing School Facility within the MCA Area not later than August 31, 2013 ("*Outside Commencement Date*"); and
- (ii) the Tech Parties shall substantially complete construction of the Nursing School Facility within the MCA Area not later than August 31, 2016 ("*Outside Completion Date*"); and
- (iii) the Tech Parties shall commence operation of the TTUHSC Nursing School program in the Nursing School Facility within ninety (90) days of substantial completion of construction of the Nursing School Facility.

Clause (i) of the Conditions of the Award shall be evidenced by Tech System's issuance of a Notice to Proceed for the Nursing School Facility. Clause (ii) of the Conditions of the Award shall be evidenced by Tech System's issuance of a Letter of Occupancy for the Nursing School Facility. Clause (iii) of the Conditions of the Award shall be deemed satisfied upon certification by TTUHSC that the TTUHSC Gayle Grieve Hunt School of Nursing has commenced operations in the Nursing School Facility.

Notwithstanding anything in this Agreement to the contrary, if the Conditions of the Award have not been satisfied by the dates specified above, as extended by MCA ("*Failure of Conditions*"), then this Agreement shall terminate, any Annual Installments paid by MCA to the Tech Parties shall be reimbursed by the Tech Parties to MCA as specified in Section 8 below, and MCA shall have no obligation to make any further Annual Installments of the Award thereafter.

If the Tech Parties are proceeding with the development and construction of the Nursing School Facility as required herein but anticipate that they will not commence construction by the Outside Commencement Date specified above, then the Tech Parties shall have the right to request an extension of the Outside Commencement Date of not more than six (6) months. In such event, the Tech Parties shall notify MCA in writing at least three (3) months prior to the Outside Commencement Date of the facts and circumstances requiring such extension of the Outside Commencement Date. MCA agrees that it will not unreasonably withhold consent for any such requested extension of the Outside Commencement Date. Should MCA agree to extend the Outside Commencement Date as specified above, then the Parties shall promptly memorialize such extension by an amendment to this Agreement.

6. **Irrevocability of Award.** Following satisfaction of the Conditions of the Award specified in Section 5 above, it is the agreement of the Parties and the intention and wish of MCA that the Award and any unpaid Annual Installments under this Agreement shall constitute a binding obligation of MCA, enforceable at law and equity against MCA and its successors and assigns, subject, however, to the requirements, conditions and qualifications specifically set forth in this Agreement. Subject to such requirements, qualifications and conditions, MCA acknowledges that (i) the Award principal or corpus, and any income thereon, are irrevocable and may not be transferred or revert to MCA, its successors or assigns, and (ii) the Tech Parties are relying upon, and shall continue to rely upon, MCA's Award being fully satisfied, upon the terms set forth herein, in proceeding with the development and construction of the Nursing School Facility.

7. **Approvals; Dissolution; Mutual Assistance.**

(a) **Required Approvals.** MCA and the Tech Parties acknowledge that the undertaking of any facility construction or development must be approved by the Board of Regents of the Texas Tech University System and the State of Texas, as required by the laws of the State of Texas. Nothing herein shall be interpreted as requiring the Tech Parties to undertake construction without all required approvals. MCA and the Tech Parties agree to exercise reasonable, good faith efforts to cooperate and assist each other in securing any and all approvals of the Board of Regents and the State of Texas that are required and requested by any Party in order to effect the terms of this Agreement.

(b) **Dissolution.** In the event TTUHSC dissolves, whether voluntarily or involuntarily, all of the rights of TTUHSC hereunder and the corpus of the Award and any accumulated earnings shall be transferred to and become the property of either (i) the Tech System, or (ii) a non-profit corporation that is (a) exempt from taxation under Section 501(c)3 of the Internal Revenue Code, or its successor provisions, and (b) restricted in its activities solely to the support of the Tech System.

(c) **Mutual Assistance.** MCA and the Tech Parties agree to exercise reasonable, good faith efforts and to cooperate and assist each other in allowing MCA to comply with the terms and conditions of the Program Grant Agreement.

8. **Return of Annual Installments Upon a Failure of Conditions.** Notwithstanding anything in this Agreement to the contrary, upon the occurrence of a Failure of Conditions, the Tech Parties agree to pay to MCA within sixty (60) days of written demand from MCA ("*Reimbursement Demand*") the aggregate amount of all Annual Installments paid by MCA to the Tech Parties hereunder prior to the Reimbursement Demand. If the Tech Parties fail to reimburse MCA as specified above, then in addition to the obligation to reimburse MCA for all Annual Installments paid prior to the Reimbursement Demand, the Tech Parties shall also be liable to MCA for interest at the Reference Rate on any unreimbursed amounts from the date of the Reimbursement Demand until fully reimbursed.

9. **Miscellaneous.**

(a) **No Recourse Against Nonparty Affiliates.** All claims, obligations, liabilities, or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, arise under, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, or performance of this Agreement (including any representation or warranty made, in connection with, or as an inducement to, this Agreement), may be made only against (and are those solely of) the entities that are expressly identified as Parties in the first paragraph of this Agreement (individually a "*Party*," and collectively the "*Parties*"). No person who is not a Party, including without limitation any director, officer, employee, incorporator, member, partner, manager, stockholder, affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any Party, or any director,

officer, employee, incorporator, member, partner, manager, stockholder, affiliate, agent, attorney, or representative of, and any financial advisor or lender to, any of the foregoing ("*Nonparty Affiliates*"), shall have any liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach; and, to the maximum extent permitted by law, each Party hereby waives and releases all such liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates. Without limiting the foregoing, to the maximum extent permitted by law (a) each Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of an entity Party or otherwise impose liability of a Party on any Nonparty Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Party disclaims any reliance upon any Nonparty Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement.

(b) **Fees.** Each Party shall pay its own legal and accounting fees incurred by such Party in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated herein.

(c) **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement signed by all Parties specifically referring to this Agreement.

(d) **Waiver.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

(e) **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of each Party, its successors, permitted assigns and legal representatives.

(f) **Interpretation.** The section and paragraph headings contained herein are for convenience only and are not intended to define or limit the contents of said sections and/or paragraphs.

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

(h) **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

(i) **Applicable Law; Venue.** 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. Sole and exclusive venue for any suit arising under this Agreement shall be in courts of competent jurisdiction in El Paso County, Texas.

(j) **Schedules and Exhibits.** All Exhibits and Schedules referenced herein are expressly incorporated into this Agreement.

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

If to MCA: Medical Center of the Americas Foundation
201 East Main, Suite 1514
El Paso, Texas 79901
Telefax: (915) 225-2477

copy to: Medical Center of the Americas Foundation
P.O. Box 2304
El Paso, Texas 79952

If to the Tech Parties: Texas Tech University Health Sciences Center
Executive Vice President for Finance & Administration
3601 4th Street, MS 6245
Lubbock, Texas 79430
Telefax: (806) 743-2910

copy to: Vice Chancellor & General Counsel
Administration Building, Room 115, Box 42021
Lubbock, Texas 79409-2021
Telefax: (806) 742-2330

Vice Chancellor for Institutional Advancement
P.O. Box 41081
Lubbock, Texas 79409-1081
Telefax: (806) 742-1793

Any notice shall either be: (a) sent by certified mail, return receipt requested, (b) sent by overnight delivery using a nationally recognized overnight courier, (c) sent by telefax, or d) sent by personal delivery. All notices shall be deemed given as of the date of actual receipt. The above addresses may be changed by written notice to the other Party given in the manner specified above; 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.

(l) **Costs and Expenses.** In the event that any Party defaults in such Party's obligations under this Agreement and, as result thereof, the other Party seeks to legally enforce the non-defaulting Party's rights hereunder against the defaulting Party, then, in addition to all damages and other remedies to which the non-defaulting Party is entitled by reason of such default, the defaulting Party shall promptly pay to the non-defaulting Party an amount equal to all costs and expenses (including reasonable attorneys' fees) paid or incurred by the non-defaulting Party in connection with such enforcement.

(m) **No Third Party Beneficiaries.** Except as specified in Section 9(a) above with respect to Nonparty Affiliates, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

(n) **Definitions and Index of Defined Terms.**

Capitalized terms used in this Agreement and not otherwise defined shall, unless expressly stated otherwise, have the meaning given in the Program Grant Agreement, or if not defined in the Program Grant Agreement, the meaning specified in this Section 9(n).

"*Agreement*" shall have the meaning given in the first paragraph hereof.

“Annual Installments” shall have the meaning given in Section 2 hereof.

“Award” shall have the meaning given in Section 2 hereof.

“City” shall have the meaning given in the first paragraph of the Recitals.

“Conditions of the Award” shall have the meaning given in Section 5 hereof.

“Effective Date” shall have the meaning given in the first paragraph hereof.

“Failure of Conditions” shall have the meaning given in Section 5 hereof.

“Letter of Occupancy” shall mean a written notice issued by the Tech System’s Office of Facilities, Planning & Construction upon the determination that the facility meets minimum construction standards set forth by the State of Texas and the Office of Facilities, Planning & Construction for occupancy.

“MCA” shall have the meaning given in the first paragraph hereof.

“Nonparty Affiliates” shall have the meaning given in Section 9(a) hereof.

“Notice to Proceed” shall mean a written notice issued by the Tech System’s Office of Facilities, Planning & Construction to its contractor(s) authorizing commencement of construction and detailing conditions of performance.

“Nursing School Facility” shall have the meaning given in the third paragraph of the Recitals.

“Outside Commencement Date” shall have the meaning given in Section 5(i) hereof.

“Outside Completion Date” shall have the meaning given in Section 5(ii) hereof.

“Party” or ***“Parties”*** shall have the meaning given in Section 9(a) hereof.

“Person,” whether or not capitalized, means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity (or any department, agency or subdivision thereof), or other entity.

“Program Grant Agreement” shall have the meaning given in the first paragraph of the Recitals.

“Reference Rate” means the rate of interest designated from time to time by Chase Bank, N.A. as its “prime” rate of interest.

“Reimbursement Demand” shall have the meaning given in Section 8 hereof.

“Restricted Purpose” shall have the meaning given in Section 3 hereof.

“Tech Parties” shall have the meaning given in the first paragraph hereof.

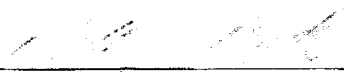
“Tech System” shall have the meaning given in the first paragraph hereof.

“TTUHSC” shall have the meaning given in the first paragraph hereof.

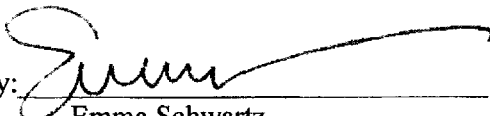
Executed as of the Effective Date specified above.

MCA:

MEDICAL CENTER OF THE AMERICAS
FOUNDATION

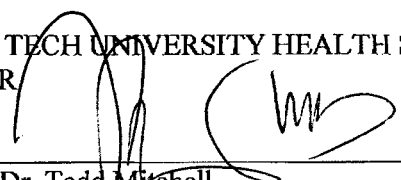
By: 
Rodolfo Mata
Chairman of the Board

MEDICAL CENTER OF THE AMERICAS
FOUNDATION

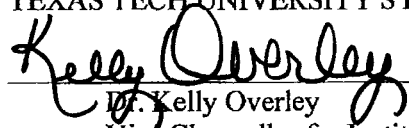
By: 
Emma Schwartz
President

TECH PARTIES:

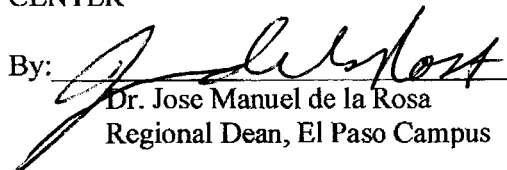
TEXAS TECH UNIVERSITY HEALTH SCIENCES
CENTER

By: 
Dr. Tedd Mitchell
President

TEXAS TECH UNIVERSITY SYSTEM

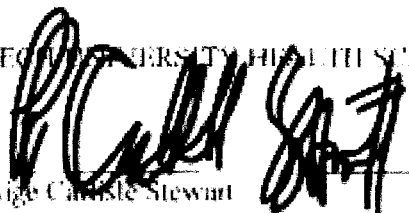

Dr. Kelly Overley
Vice Chancellor for Institutional Advancement

TEXAS TECH UNIVERSITY HEALTH SCIENCES
CENTER

By: 
Dr. Jose Manuel de la Rosa
Regional Dean, El Paso Campus

TEXAS TECHNOLOGICAL UNIVERSITY HEALTH SCIENCES
CENTER

By: _____


Paige Canale Stewart
Director of Development, El Paso Campus

List of Schedules and Exhibits

Schedule 1 – Program Grant Agreement

SCHEDULE 1

ECONOMIC DEVELOPMENT

PROGRAM GRANT

AGREEMENT

28

STATE OF TEXAS § ECONOMIC DEVELOPMENT
 § PROGRAM GRANT AGREEMENT
 § OF THE CITY OF EL PASO
 COUNTY OF EL PASO § (Medical Center of the Americas- Impact Fund Project)

This Economic Development Program Grant Agreement (the "Agreement") 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 non-profit 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, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to grant and loan municipal funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, on June 14, 2011, the City adopted a Chapter 380 economic development program by creating City of El Paso Economic Development Incentive Policy Impact Fund (the "Program") for the purpose of achieving economic growth, expanding and diversifying the tax base and creating new quality jobs within the City of El Paso; and

WHEREAS, Applicant has requested an economic development grant for the purpose of undertaking an economic development project consisting of biomedical cluster specific programs and infrastructure projects, which will be a significant economic generator for the City to attract and retain companies that support the City's targeted industries; and

WHEREAS, the City has determined that a grant of funds to Applicant will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City; and

WHEREAS, the City has concluded and hereby finds that this Agreement embodies an eligible program and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interest of the City and 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:

SECTION 1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth or referenced in this section unless otherwise expressly provided herein.

"*Additional Fee*" means the three quarters of one percent (0.75%) incremental increase in compensation received by the City under the terms of, and as more fully described and defined in, the Franchise Agreement.

"*Affiliate*" means, when used with reference to a specified person, (i) any person that directly or indirectly controls or is controlled by or is under common control with the specified person, or (ii) any

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person that is an employee of, an officer of, a general partner in or a trustee of, or serves in a similar capacity with respect to, the specified person or any person described in clause (i). In the case of a person who is an individual, Affiliate shall include (x) any member of the immediate family of such person, including the spouse, siblings and lineal descendants and their spouses, of such immediate family member, (y) any trust whose principal beneficiary is such person or one or more members of such immediate family, and (z) any person or entity controlled by such individual's immediate family or any such trust. For purposes of this definition, "control" when used with respect to any specified person or entity means the power to direct the management and policies of such person or entity, directly or indirectly, whether through the exercise of voting rights, by contract or otherwise.

"*Agreement*" means this Economic Development Program Grant Agreement, together with all exhibits and schedules attached to this Agreement, and any amendments hereto.

"*Applicant*" means the Medical Center of the Americas Foundation.

"*Building Components*" has the meaning set forth in Section 4A of this Agreement.

"*Building Component Grant*" means that portion of the Total Grant Amount to be used by the Applicant to cause the construction of the Building Components.

"*City*" means the City of El Paso, Texas.

"*City Council*" means the governing body of the City.

"*CRO*" means Clinical Research Organization.

"*Effective Date*" means the date upon which both parties have fully executed this Agreement as set forth on the signature page hereof.

"*Event of Default*" shall have the meaning set forth in Section 9 hereof.

"*Event of Nonappropriation*" means the failure of the City to appropriate for any Fiscal Year, sufficient funds to pay the Grant payments, or the reduction of any previously appropriated money below the amount necessary to permit the City to pay the Grant payments from lawfully available funds.

"*Fiscal Year*" shall mean the 12 month fiscal period of the City currently commencing on September 1 and ending on August 31 of the following year, or such other annual accounting period as the City may hereafter adopt.

"*Force Majeure*" shall have the meaning set forth in Section 13M hereof.

"*Franchise Agreement*" means City Ordinance No. 16090, as amended by City Ordinance No. 017460 adopted on November 16, 2010, which grants to El Paso Electric Company a franchise to operate the electric utility for the transmission and distribution of electrical energy within the boundaries of the City, and any further amendments or supplements thereto or restatements, extensions or replacements thereof.

"*Grant*" means any payment to Applicant under the terms and conditions of this Agreement.

"*Impact Fund*" means the general revenue fund restricted account established by the City for deposit of the Additional Fee received by the City pursuant to the terms of the Franchise Agreement.

"*MCA Area*" means an area within the City encompassing approximately 440 acres, located south of Interstate 10, north and west of Paisano Drive and east of Boone Street and currently anchored by the

University Medical Center of El Paso and the Texas Tech University Health Sciences Center Paul L. Foster School of Medicine.

“Non-Building Components” shall have the meaning set forth in Section 4A hereof.

“Non-Building Component Grant” means that portion of the Total Grant Amount which is to be used by the Applicant to develop the Non-Building Components.

“Notice of Payment Suspension” shall have the meaning set forth in Section 9E hereof.

“Performance Indicators” shall have the meaning set forth in Section 4C hereof.

“Person”, whether or not capitalized, means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a governmental entity (or any department, agency or political subdivision thereof) or other entity.

“Program” shall have the meaning set forth in the recitals to this Agreement.

“Project” means the development of biomedical cluster specific programs and infrastructure projects within the MCA Area, as more specifically described on Exhibit A hereto, as amended from time to time.

“Project Status Report” means the report required to be supplied to the City on an annual basis pursuant to Section 4D hereof.

“Projected Completion Date” shall have the meaning set forth in Section 4A hereof.

“Projected Start Date” shall have the meaning set forth in Section 4A hereof.

“Request for Grant Disbursement” means the request and certification and related documentation required to be supplied by Applicant in accordance with the requirements of Section 5 hereof, with such documentation more fully described in Exhibit C.

“Special Event of Default” shall have the meaning set forth in Section 9D hereof.

“Total Grant Amount” shall mean the aggregate of all payments made under the terms of this Agreement, which shall not exceed seventy five percent (75%) of the Additional Fee received by the City from September 1, 2011 to August 31, 2030.

“TTUHSC” means Texas Tech University Health Sciences Center.

SECTION 2. TERM

The term of this Agreement shall commence on the Effective Date and shall terminate on the first to occur of: (i) August 31, 2030, plus such additional time thereafter as may be necessary to process any final Grant payment payable pursuant to the terms hereof; or (ii) termination of this Agreement in accordance with Section 11 hereof.

SECTION 3. GRANT

A. Purpose. The purpose of the Grant is to accelerate economic development efforts in the City, including, but not limited to, accelerating the creation of high-technology firms operating in the El Paso region in the targeted industries related to the fields of life sciences, biomedical science, and clean tech

and clean energy technologies. The Project is anticipated to promote local economic development and stimulate business and commercial activity within targeted industries in the City.

B. Payment of Grant.

(1) The first two payments of the Grant shall aggregate \$3,000,000.00, representing the unreserved, undesignated Impact Fund balance for Fiscal Years 2011 and 2012. Following the Effective Date, the City shall pay said \$3,000,000.00 for Fiscal Years 2011 and 2012 to Applicant as follows, following receipt by the City of a Request for Grant Disbursement in substantially the form of Exhibit "C" hereto:

- (i) April 1, 2012 - \$2,000,000
- (ii) August 31, 2012 - \$1,000,000

(2) Beginning with Fiscal Year 2013 and for each Fiscal Year thereafter during the term of this Agreement, the Grant amount payable by the City shall be seventy five (75%) of the prior year's Additional Fee received by the City under the Franchise Agreement, all being subject to annual appropriation by City Council in accordance with Section 10 hereof. Such Grant payments shall be made in quarterly installments each September 30, December 31, March 31 and June 30 during the term of this Agreement following receipt by the City of a Request for Grant Disbursement in substantially the form of Exhibit C hereto.

C. Maximum Payments. The aggregate of all Grant payments made to the Applicant during the term of this Agreement shall not exceed the Total Grant Amount.

D. Satisfaction of Program Requirements. Continued eligibility for the Non-Building Component Grant payment is expressly contingent upon Applicant's compliance with the requirements set out in Section 4 of this Agreement.

SECTION 4. OBLIGATIONS OF APPLICANT

A. Project Requirements. Applicant agrees to develop the Project in accordance with the terms of this Agreement and as described on attached Exhibit A, which is incorporated herein by reference. The parties agree that Exhibit A may be amended, modified or supplemented from time to time, to reflect revisions to the non-building subprojects specified in paragraphs 1 through 6 of Exhibit A ("*Non-Building Components*"), by an updated Exhibit A approved by both the City Manager and an authorized representative of the Applicant in writing and attached to this Agreement, *provided, however*, any amendment, modification or supplementation which will result in revision to more than fifty percent (50%) of the non-building subprojects identified in the original Exhibit A will require the approval of the City Council. Grants will be used to pay Project costs and may not be used for the reimbursement of the Applicant's administrative, design, or construction costs accruing prior to the Effective Date. In addition to achieving the Project goals for the Non-Building Components of the Project, based upon the Performance Indicator evaluation specified in Section 6B below, Applicant is required to meet specified deadlines with respect to construction of the portions of the Project identified in paragraphs 7 through 9 of Exhibit A that entail the construction of buildings. The building components of the Project designated in paragraphs 7 through 9 of Exhibit A are hereinafter referred to as the "*Building Components*". Applicant must commence or cause the commencement of construction of each of the Building Components not later than eighteen (18) months from the "*Projected Start Date*" for each such Building Component, as specified in Exhibit A, and as evidenced by issuance of a building permit for such Building Component. Additionally, Applicant must substantially complete or cause each Building Component to be substantially completed, as evidenced by a certificate of occupancy, within six (6) months of the "*Projected Completion Date*" for each such Building Component, as specified in Exhibit A. The commencement date requirements and completion date requirements for each of the Building

Components shall be objective requirements for Applicant's performance under this Agreement. Notwithstanding the foregoing, the parties acknowledge that Applicant's ability to meet the commencement of construction and completion of construction requirements for some of the Building Components depends upon participation by one or more public entities in such Building Components. In the event that any of the Building Components are not feasible because of the failure by one or more public entities to participate, then the City and Applicant agree to negotiate in good faith to identify mutually acceptable replacement projects to substitute for any Building Components that cannot proceed for lack of public entity participation. Any such replacement project so identified and mutually acceptable to the City and the Applicant may then be substituted for the Building Component that is being replaced, and the parties may agree on revised Projected Start Dates and revised Projected Completion Dates for any substitute Building Components, being an update to Exhibit A which requires the approval of the City Council. If no replacement project can be agreed upon, the Total Grant Amount available under this Agreement will be reduced to account for the deleted Building Component.

B. Annual Presentation. On a date mutually acceptable to the City and Applicant (beginning with Fiscal Year 2013), Applicant shall present to City Council, at a regularly scheduled City Council meeting, its annual report detailing progress on the Project.

C. Performance Indicators. Applicant agrees to undertake the development of the Project in accordance with the terms of this Agreement, and to submit, as part of its Project Status Report, a description of progress made in achieving Project goals. Applicant's progress in achieving Project goals with respect to the Non-Building Components of the Project shall be evaluated using the performance standards set forth in Exhibit B (the "Performance Indicators"). The Performance Indicators may be amended, modified or supplemented from time to time by an updated Exhibit B requiring the approval of the City Council. Applicant must demonstrate measureable progress in the development of the Non-Building Components of the Project by reference to the Performance Indicators and must score "Favorable" or "Progressing" in at least fifty percent (50%) of the Performance Indicators in accordance with the City evaluation required by Section 6B hereof. If Applicant fails to meet such scoring threshold for two (2) consecutive Fiscal Years (beginning with Fiscal Year 2013), the City shall provide written notice of such failure to Applicant, which will be subject to the terms stated in Section 9A(4).

D. Project Status Report.

(1) Applicant will annually submit a written report ("*Project Status Report*") describing the current status of development of the Project and Applicant's achievement of Project goals with respect to the Non-Building Components of the Project based upon the Performance Indicators. The Project Status Report must be submitted no later than 90 days after the end of each Fiscal Year during development of the Project (beginning with Fiscal Year 2013); provided however, if not less than ten (10) business days prior to any submittal deadline, Applicant submits to the City Manager a written request for extension, along with a reasonable justification for the delay, the City Manager or designee may by written notice to the Applicant extend the submittal deadline for up to an additional six (6) weeks. The Project Status Report shall include a section showing, for the prior Fiscal Year covered by the Project Status Report, (i) the total Grant for the prior Fiscal Year, (ii) Grant expenditures made by Applicant during the prior Fiscal Year, itemized by category among the various Building Components and Non-Building Components, and (iii) any unused amounts held by Applicant from the Grant for the prior Fiscal Year.

(2) If Applicant fails to timely submit the Project Status Report, the City may give Applicant written notice of its failure to timely submit the Project Status Report, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Project Status Report. If Applicant still has not submitted the Project Status Report following such thirty (30) day period, the City shall proceed with the evaluation required by Section 6B based on the most recent Project data reasonably available to the City.

SECTION 5. REQUEST FOR GRANT DISBURSEMENT; INITIAL GRANT

Applicant shall submit, not less than thirty (30) days prior to each scheduled Grant disbursement, as specified in Section 3B hereof, a Request for Grant Disbursement in substantially the form of Exhibit "C" hereto. With the initial Request for Grant Disbursement made by Applicant pursuant to Section 3B(1), for the aggregate Grant amount for Fiscal Years 2011 and 2012, Applicant shall submit with the Request for Grant Disbursement ten (10) copies of Applicant's current, updated in-progress project plan for the development of the Project.

SECTION 6. OBLIGATIONS OF CITY

A. Payment of Grant. The City agrees to promptly process and remit to Applicant Grant payments in accordance with the terms of this Agreement. It is expressly understood by the parties to this Agreement that, except as otherwise provided herein, payment of the Grant in no way obligates the City's general fund or any monies or credits of the City and creates no debt of, nor any liability to, Applicant or third parties beyond the specific obligations contained herein. All payments made by the City under this Agreement are subject to appropriation of such funds for such payments to be paid in the budget year for which they are made.

B. Performance Indicator Evaluation. Beginning with Fiscal Year 2013, the City Manager or designee shall perform a subjective evaluation of Applicant's achievement of the Project goals (other than the Building Components) based upon the Performance Indicators and the Project Status Report. Based upon the Projected Start Date for the Non-Building Components of the Project listed in paragraphs 1 through 6 of Exhibit A, the City Manager or designee shall score each Performance Indicator as either "Favorable" (meaning Applicant has met or exceeded the Performance Indicator), "Progressing" (meaning Applicant is making diligent good faith efforts on meeting the Performance Indicator), or "Unsatisfactory" (meaning Applicant has failed to meet the Performance Indicator by twenty-five percent (25%) or more). Applicant must score "Favorable" or "Progressing" in at least fifty percent (50%) of the Performance Indicators, consistent with the Projected Start Date for each of the Non-Building Components of the Project listed in paragraph 1 through 6 of Exhibit A. (For example: five (5) of the Non-Building Components of the Project listed in paragraphs 1 through 6 of Exhibit A have Fiscal Year 2012 Projected Start Dates. In evaluating whether Applicant has complied with the provisions of this Section 6B in Fiscal Year 2012, therefore, Applicant must achieve either a "Favorable" or "Progressing" rating for at least three (3) of the Non-Building Components of the Project ($5 \times 50\% = 2.5$, rounded to 3). Once any Non-Building Component listed in Exhibit A is completed, then that particular Non-Building Component shall be rated as "Favorable" for all subsequent annual Performance Indicator evaluations performed by the City during the term of this Agreement under this Section 6B.

C. Building Component Grant Not Subject to Set-Off. Except as expressly provided in Sections 9 and 10 hereof, the City shall have no right to withhold, set-off or reduce the Building Component Grant amounts or the obligation to remit such amounts when due hereunder regardless of any claim or dispute it may have regarding this Agreement or other agreements with the Applicant.

D. Budgetary Consideration. The City presently intends to continue this Agreement for its term and to pay all Grant payments in accordance with the terms hereof, subject to the City's rights under Section 10 hereof. On a going forward basis, the City shall consider the funding of the Grant payments in conjunction with preparation of its annual budget.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Applicant shall maintain the fiscal records and supporting documentation for all expenditures related to the Project. Applicant shall retain such records, and any supporting documentation for the

greater of (i) the most recent five-year period, or (ii) the period required by applicable laws and regulations.

B. Upon reasonable advance notice, Applicant shall give the City Manager, the City Manager's designee, or any of the City's authorized representatives, reasonable access to and the right to examine all books, accounts, records, audit records, files, documents, written or photographic material, videotape, and other papers, things, or property belonging to or in the possession of Applicant pertaining to the Grant funds expended or received by Applicant. Copying and auditing will be performed at a reasonable time and place, such as during the Applicant's usual business hours, and at Applicant's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Agreement. The City Manager or designee may additionally request reasonable copying, mailing and/or electronic transmission of records by Applicant at City expense.

SECTION 8. MONITORING

A. The City reserves the right to perform, or have its authorized agents perform, periodic on-site or desk audit monitoring of Applicant's compliance with the provisions of this Agreement. The monitoring shall be conducted in a reasonable time, place and manner by the City and with reasonable advance notice. Applicant shall provide reasonable assistance and information needed by the City in monitoring and evaluating the performance of the Project. It is understood that the City will perform periodic fiscal and annual programmatic monitoring reviews including a review of any financial audit conducted by the Applicant. The City, and/or its agents may request the copying, mailing, and/or electronic transmission of Applicant's records in connection with an on-site or desk audit monitoring at City expense.

B. Monitoring reviews will include a written report to Applicant documenting findings and concerns that will require a written response to the City. A good faith response must be received by the City within thirty (30) days from the Applicant's receipt of the monitoring report audit review letter.

C. Failure of Applicant to take all reasonable actions necessary to resolve and close monitoring or audit findings to the reasonable satisfaction of the City within sixty (60) days of receipt of the monitoring report or audit review letter shall be considered an Event of Default under this Agreement; *provided however*, the City Manager or designee shall have the discretion to extend the 60-day period for reasons the City Manager or designee may judge to be extenuating circumstances.

SECTION 9. EVENTS OF DEFAULT

A. Applicant Events of Default. Each of the following shall constitute an Event of Default by Applicant under this Agreement:

(1) A material breach or failure of performance by the Applicant of any material covenant, condition, or agreement on its part to be observed or performed contained herein (other than a breach or failure covered by another paragraph in this Section 9) and the continuance of any such breach or failure (if capable of remedy) for a period of thirty (30) days after notice thereof from the City to the Applicant *provided, however*, that if such breach or default cannot reasonably be cured within the thirty (30) day period but corrective action to cure such default is commenced and diligently pursued until the default is corrected, no such Event of Default shall be deemed to have occurred; or

(2) Any of the Applicant's material representations or warranties made or incorporated herein by reference or in any statement or certificate at any time given pursuant hereto or in connection herewith proves at any time to have been false or misleading in any material respect when made and the continuance of any such false or misleading statement or certificate (if capable of remedy) for a period of thirty (30) days after written notice thereof from the City to the Applicant *provided, however*, that if such breach or failure cannot reasonably be cured within the thirty (30) day period but corrective action to cure

such default is commenced and diligently pursued until the default is corrected, no such Event of Default shall be deemed to have occurred; or

(3) Prior to completion of the Project, the Applicant (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or of a substantial part of its property or assets, (ii) admits in writing its inability, or is generally unable, to pay its debt as such debt become due, (iii) makes a general assignment for the benefit of creditors or declares a moratorium with respect to its debt, (iv) commences a voluntary case under the bankruptcy code (as now or hereafter in effect), (v) files a petition seeking to take advantage of any other laws relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, or (vi) acquiesces in writing to, or fails to controvert in a timely and appropriate manner, any petition filed against it in an involuntary case filed under the bankruptcy code (as now or hereafter in effect) seeking liquidation or reorganization with respect to a substantial part of its assets, and such case or proceeding is not stayed or dismissed within sixty (60) days of the filing of such petition; or

(4) Applicant fails to meet the scoring threshold with respect to the Performance Indicators as described in Section 4C hereof for two (2) consecutive Fiscal Years, (beginning with Fiscal Year 2013), provided that written notice of such failure is sent by the City to the Applicant in accordance with such Section 4C.

B. City Events of Default. Each of the following shall constitute an Event of Default by the City under this Agreement:

(1) A material breach or failure of performance by the City of any material covenant, condition, or agreement on its part to be observed or performed contained herein (other than a breach or failure covered by another paragraph in this Section 9) and the continuance of any such breach or failure (if capable of remedy) for a period of thirty (30) days after notice thereof from the Applicant to the City *provided, however,* that if such breach or default cannot reasonably be cured within the thirty (30) day period but corrective action to cure such default is commenced and diligently pursued until the default is corrected, no such Event of Default shall be deemed to have occurred; or

(2) Any of the City's material representations or warranties made or incorporated herein by reference or in any statement or certificate at any time given pursuant hereto or in connection herewith proves at any time to have been false or misleading in any material respect when made and the continuance of any such false or misleading statement or certificate (if capable of remedy) for a period of thirty (30) days after written notice thereof from the Applicant to the City *provided, however,* that if such breach or failure cannot reasonably be cured within the thirty (30) day period but corrective action to cure such default is commenced and diligently pursued until the default is corrected, no such Event of Default shall be deemed to have occurred.

C. Remedies in Respect of Events of Default. Upon an Event of Default by either party and in addition to any other remedies expressly set forth in this Agreement, the non-defaulting party shall have such remedies as are available in law or equity for breach of contract; provided, however that, subject to Section 10 hereof, the City may not suspend, offset or reduce the Building Component Grant by reason of an Event of Default except in the case of a Special Event of Default and in that instance, only after following the procedures outlined below in Sections 9D, E and F hereof.

D. Special Events of Default. Each of the following shall constitute a Special Event of Default under this Agreement:

(1) If Applicant fails to commence or cause the commencement of construction of at least sixty percent (60%) of the Building Components within eighteen (18) months from the respective "Projected Start Dates" for such Building Components, as specified in Exhibit A, or if Applicant fails to

substantially complete or cause the substantial completion of at least sixty percent (60%) of the Building Components, as evidenced by a certificate of occupancy, within six (6) months from the respective "Projected Completion Dates" of such Building Components, as specified in Exhibit A;

(2) If Applicant fails to substantially complete or cause the substantial completion of one hundred percent (100%) of the Building Components, as evidenced by a certificate of occupancy, within six (6) months from the latest "Projected Completion Date" specified in Exhibit A, as the same may be amended as set forth in this Agreement.

E. Payment Suspension in Response to a Special Event of Default.

(1) Only upon the occurrence and continuance of a Special Event of Default under Section 9D(1) or 9D(2) hereof, the City may by ninety (90) days prior written notice ("*Notice of Payment Suspension*") delivered to the Applicant suspend payment of up to the Total Grant Amount until such Special Event of Default is cured to the City's reasonable satisfaction.

(2) During any such suspension of the Grant, the Applicant shall, to the extent reasonably possible under its other contractual obligations, suspend, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement and shall cease to incur costs thereunder unless Applicant has other funds with which to make such payments. The Applicant agrees and understands that the City will not be liable to Applicant or to third parties for any costs incurred subsequent to receipt of a Notice of Payment Suspension.

F. Termination if Special Event of Default Not Cured. Upon the occurrence and continuance of a Special Event of Default and a suspension of the Grant pursuant to Section 9E(1) above for a minimum of one hundred eighty (180) days, the City may upon thirty (30) days prior written notice delivered to the Applicant terminate this Agreement.

G. Waiver. It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not, except as specified herein, preclude the exercise of any other right or remedy under any other provision hereof, or available at law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, nor shall such delay or omission be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

SECTION 10. APPROPRIATION

A. Subject to Appropriation. Notwithstanding anything herein to the contrary, the City's obligation to make the Grant payments is subject to appropriation by the City Council of funds lawfully available to make such payments and the Applicant acknowledges that the City has no legal obligation to appropriate funds to make the Grant payments. Upon an Event of Nonappropriation, the City may terminate its obligation to make the Grant payments accruing or due hereunder in any Fiscal Year or Fiscal Years affected by the Event of Nonappropriation by giving notice of nonappropriation to Applicant. Such nonappropriation will not be a default by the City under this Agreement.

B. Notice. The City shall provide the Applicant with written notice within 72 hours of (i) the presentation of any staff proposed budget to the City Council which does not include sufficient funds to pay the Grant payment amounts or any other amounts due hereunder; or (ii) the occurrence of action by the City Council which constitutes an Event of Nonappropriation, or any failure to appropriate funds

sufficient to pay the Grant payment amounts due during the current Fiscal Year or succeeding Fiscal Years.

SECTION 11. TERMINATION

- A. **Mutual Consent.** The parties may terminate this Agreement by mutual written consent signed by duly authorized representatives of the parties.
- B. **Event of Nonappropriation.** The Applicant may, by prior written notice to the City, terminate this Agreement upon an Event of Nonappropriation.
- C. **Special Event of Default.** Only to the extent specifically authorized by Section 9F hereof, including the notice requirements set forth therein, the City may terminate this Agreement upon a Special Event of Default.
- D. **City Nonperformance.** In the event of an Event of Default by the City under this Agreement, the Applicant may terminate this Agreement upon prior written notice to the City at which time all obligations of the parties shall cease.
- E. **Additional Termination Rights by City.** The City may terminate this Agreement without the requirement of an Event of Default or Special Event of Default by Applicant if any state or federal statute, regulation, case law or other law renders this Agreement illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is unconstitutional.

SECTION 12. CONFLICT OF INTEREST; GRATUITIES

- A. **In General.** Applicant shall use its best efforts to ensure that no employee, officer, or duly authorized agent of Applicant shall participate in the selection or awarding of any contract or agreement which will be reimbursed by funds provided hereunder if a conflict of interest, would be involved. For purposes of this Section 12, such conflict of interest would arise when (1) the employee, officer, director or duly authorized agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the work. Applicant shall adopt ethics rules comparable to Title 2, Section 2.92.050 Standards of Conduct, City of El Paso Ethics Code, available for review on the City's official website or at the Office of the City Clerk in connection with its performance under this Agreement.
- B. **Financial Interests in the Project.** Except for eligible administrative costs, no employee, duly authorized agent, director, or officer of Applicant, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in the Project, either for themselves or their Affiliates, during the term of their relationship with Applicant and for a two (2) year period after termination of their relationship.
- C. **Gratuities.** The City may, by written notice to Applicant, cancel this Agreement without liability to Applicant if it is determined by the City that gratuities, in the form of entertainment, gifts, financial inducements, or otherwise, were offered or given by Applicant, or any agent or representative of Applicant, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amounts equivalent to those incurred by Applicant in providing such gratuities.

SECTION 13. MISCELLANEOUS PROVISIONS

A. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. Except as otherwise provided, no alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

B. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

C. Assignment; Performance Through Affiliates. Except as provided below, neither the City nor Applicant may assign its rights or obligations under this Agreement to a third party without prior written approval of the other party, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding anything herein to the contrary, Applicant may assign all or part of its rights and obligations under this Agreement without the prior consent of the City to an Affiliate of Applicant, to a major occupant/user of any Building Component in connection with a development agreement between Applicant and such occupant/user, or to a third party lender or trustee in connection with the financing or refinancing of the acquisition, construction or operation of the Project by the Applicant; provided, however, Applicant must provide written notice of such assignment within thirty (30) days thereof. Applicant may perform its obligations hereunder, including, without limitation, effecting the development of the Project in accordance with the terms of this Agreement, directly or indirectly through its Affiliates.

D. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.

E. Captions. The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.

F. Confidentiality Obligations. The confidentiality of employment records and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant or other third party as a basis for nondisclosure.

G. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

H. Employment of Undocumented Workers. During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If Applicant violates this provision, Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. The City may also recover court costs and reasonable

attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by any subsidiary, Affiliate, or franchisee, or by a person which whom Applicant contracts.

I. Execution of Agreement. The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.

J. Independent Contractor. City and Applicant understand that Applicant is an independent contractor and that no term or provision hereof or act of Applicant in performance of this Agreement shall be construed as making Applicant and/or its Affiliates an agent or employee of the City. All officers and employees of the Applicant and/or its Affiliates shall be solely responsible to the Applicant, and the City shall not have any authority, responsibility, or liability with respect thereto.

K. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
City Manager
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Economic Development Department Director
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: Medical Center of the Americas Foundation
201 E. Main, Suite 1514
El Paso, Texas 79901

Copy To: Medical Center of the Americas Foundation
P.O. Box 2304
El Paso, Texas 79952

Copy To: Scott Hulse PC
1100 Chase Tower
201 E. Main Drive
El Paso, Texas 79901
Attn: W. David Bernard

L. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Applicant or the Project unless specifically enumerated herein.

M. Force Majeure. If either party hereto shall be prevented from performing any act required under this Agreement by any cause beyond the control of such party, including, without limitation, Force Majeure delays of the nature described below, the time for such performance shall be extended by the period of such delay. For purposes of this Agreement, "Force Majeure" shall mean delays resulting

directly or indirectly from (i) inclement weather, fire or earthquake, acts of God, war, moratorium, or other casualty or (ii) any litigation (other than litigation initiated by Applicant or its affiliates unless Applicant is simply intervening in an action brought by or against the City) affecting the Project or this Agreement, including without any limitation, any action to enjoin performance by Applicant or the City hereunder; (iii) any action or inaction by any governmental authority, which is due to no fault of the Applicant, or any litigation regarding the Project due to no fault of the Applicant which delays, impairs or prevents Applicant from obtaining utility services to the MCA Area; and/or (iv) any delays caused by labor troubles, strikes or material shortages.

N. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

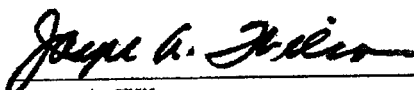
O. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement, shall survive termination.

P. Waiver. 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 rights granted hereunder are in addition to those available under law and equity.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

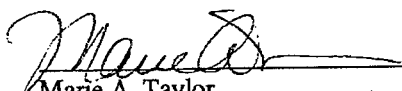
IN WITNESS WHEREOF, the parties have executed this Agreement on this 7th day of February, 2012.

CITY OF EL PASO, TEXAS



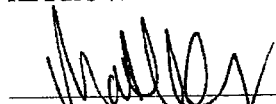
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:




Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Deputy Director
Planning and Economic Development
Department

**MEDICAL CENTER OF THE AMERICAS
FOUNDATION**

By: 

Name: Emma W. Schwartz
Title: President

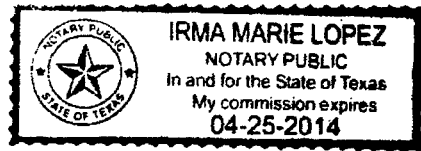
CITY CLERK DEPT.
2012 JAN 31 AM 9:57

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was executed before me on the 7th day of February, 2012, by Joyce B. Wilson, as City Manager of the City of El Paso on behalf of _____.

Irma Marie Lopez
Notary Public, State of Texas

My Commission Expires:

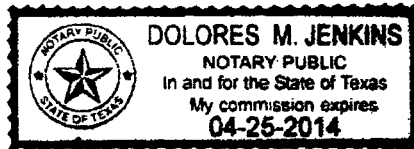


STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was executed before me on the 1st day of February, 2012, by Emma W. Schwartz, as President of the MCA Foundation on behalf of Medical Center of the American Foundation.

Dolores M. Jenkins
Notary Public, State of Texas

My Commission Expires:
04/25/2014



CITY CLERK DEPT.
2012 JAN 31 AM 9:57

**MEDICAL CENTER OF THE AMERICAS
FOUNDATION**

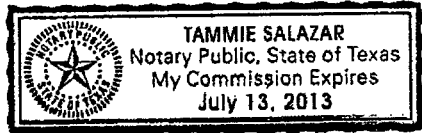
By: *Rodolfo Mata*
Name: Rodolfo Mata
Title: Chairmain of the Board

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was executed before me on the 011 day of February, 2012, by Rodolfo Mata, as Chairman of the Board of Medical Center of the Americas Foundation, a Texas non-profit corporation, on behalf of non-profit corporation.

Tammie Salazar
Notary Public, State of Texas

My Commission Expires:
July 13, 2013



List of Exhibits

- Exhibit A - Project Description
- Exhibit B - Performance Indicators
- Exhibit C - Grant Disbursement Request Form

EXHIBIT A – Project

As of the Effective Date of this Agreement, it is anticipated that the “Project” shall consist of the undertakings/sub-projects listed in numbered paragraphs 1 through 9 below:

1. **Project A -- Baseline Staffing For Biomedical Cluster:** The MCA Foundation has been asked to take on a leadership role for the region in the development of a biomedical cluster. Project A creates a baseline staffing level to make this possible. Costs for Project A will include salary, benefits and office overhead. The MCA Foundation in demonstration of completion of this task shall complete the following:

- (i) Hire a “Director of Impact Fund Projects/Chief Financial Officer,” whose main purpose will be to oversee all MCA Projects, and
- (ii) Hire an “Administrative Assistant,” who will be primarily devoted to Impact Fund project and directly related office duties.

Projected Start Date: Fiscal Year 2012

Projected Completion Date: On-going

2. **Project B -- Planning and Design:** The MCA Foundation will complete planning and design for the MCA Biomedical Tech Center, MCA BioTech Commercialization Institute, CRO and Proof of Concept Fund, and complete a Strategic Business Plan, to include implementing any associated organizational structures.

Projected Start Date: Fiscal Year 2012

Projected Completion Date: Fiscal Year 2013

3. **Project C.1 -- Creation of MCA BioTech Commercialization Institute as a Subsidiary or Affiliate to the MCA Foundation:** The MCA Foundation will establish, launch and scale-up operations of the “MCA BioTech Commercialization Institute,” a technology development and commercialization entity that bridges university Intellectual Property (IP) to the marketplace.

Projected Start Date: Fiscal Year 2013

Projected Completion Date: On-going

4. **Project C.2 -- Clinical Research Organization (CRO):** The MCA Foundation will establish, launch and scale-up operations of a local clinical trials network. The MCA Foundation will manage this network through education, cataloging providers’ specialty areas and their patient demography and case mix, and linking the providers with clinical trials on a large scale. The MCA Foundation will affiliate with one or more established CROs that will connect pharma and/or bio-tech companies with products needing clinical trials. The MCA Foundation will then assist in integrating the clinical trials into the local provider network.

Projected Start Date: Fiscal Year 2012

Projected Completion Date: On-going

5. **Project C.3 -- Proof of Concept Fund:** Funds are needed to invest in start-up biotech companies meeting a defined set of qualifications –each grant being up to \$50,000 per company with a potential second grant at least one year later, in the amount of \$25,000 to \$50,000.

Projected Start Date: Fiscal Year 2013

Projected Completion Date: On-going

6. Project D -- Land Acquisition: The MCA Foundation shall acquire necessary strategic land, building and laboratory sites leading to maximized economic development in the special research center district.

Projected Start Date: Fiscal Year 2013

Projected Completion Date: Fiscal Year 2015

7. Project D.1 -- Surface and/or Structured Parking necessary for MCA Foundation and related MCA area activities.

Projected Start Date: August 2013

Projected Completion Date: 36 months from commencement of construction

8. Project E -- MCA Tech Building: MCA Foundation will dedicate funds to the cost of the primary anchor building in the MCA Research Park, the MCA Biomedical Technology Center, and to optimize research and development uses (e.g., research, commercialization, incubation and commercial tenant occupancy). The funds will also contribute to the build out of laboratory facilities and purchase of equipment for use in performing translational Research and Development projects with corporate clients or special multi-client programs.

Projected Start Date: August 2014

Projected Completion Date: 36 months from commencement of construction

9. Project F -- TTUHSC Gayle Greve Hunt School of Nursing Building: The TT/Hunt School of Nursing is currently leasing a building near downtown El Paso and desires to return to the MCA Area campus to optimize nursing and medical student interaction, to utilize medical school facilities and to provide closer access to University Medical Center of El Paso and the El Paso Children's Hospital as the primary teaching facilities for TTUHSC schools.

Projected Start Date: August 2013

Projected Completion Date: 36 months from commencement of construction

EXHIBIT B – Performance Indicators

Note: The “Performance Indicators” are the headings numbered 1 through 7 below.

1. Performance Indicator for Project A -- MCA Operational Costs: Reporting for this activity will be made by completion of the staffing information in a form mutually acceptable to the City and the MCA Foundation. The MCA Foundation shall make any written employment contracts or offer letters for the positions described in Exhibit A available for review by City staff within 14 days of any request. Certain confidential information will be redacted on copies provided to the City.

2. Performance Indicator for Project B -- Planning and Design: MCA Biomedical Tech Center Building, Design and Strategic Business Plan, and MCA BioTech Commercialization Institute Design and Implementation Plan (which includes planning for the Clinical Research Organization, and Proof-of-Concept Fund). Compliance shall be demonstrated by the MCA Foundation providing two copies in electronic format of the following non proprietary and non confidential reports, to include any amendments made to the plans on an annual basis. Certain confidential information will be redacted on copies provided to the City. City staff shall have the right to review (at the MCA Foundation offices) proprietary products within 14 days of any request.
 - (a) Strategic business plan for the MCA Biomedical Tech Center Building will include the following sections:
 - (i) Phase I – Visioning
 - (ii) Phase II – Strategy
 - (iii) Phase III – Business Plan
 1. Building Planning and Design
 2. Development Plan
 3. Operating / Management Plan
 4. Pro-formas / Budgets
 5. Financing / Funding Plan
 - (b) Presentation to City Council that summarizes the MCA Foundation Board-adopted business plans.

3. Performance Indicator for Project C.1 (first stage): Design and implementation plan for the MCA Biotech Commercialization Institute (which includes the Clinical Research Organization, and Proof-of-Concept Fund) to include the following elements:
 - (a) Professionally audited financial statements approved by the MCA Foundation on an annual basis.
 - (b) Annual report from the MCA Foundation that the board has taken action on and approved the following:
 - (i) MCA Tech Center Building and MCA Commercialization Plans
 - (ii) MCA Commercialization Institute (Core Entity) Planning
 - (iii) Discovery Unit Planning: MCA Translational Research Joint Venture
 - (iv) Development Unit Planning: MCA Commercialization Center
 - (v) Deployment Unit Planning: MCA Biomedical Competitiveness Services
 - (vi) Governance and Integration with MCA Foundation and MCA Holding Company
 - (vii) Roll-out – Launch Formal Operations
 - (viii) Presentation to City Council

- (c) The MCA Foundation shall also make these documents available for review by City staff within 14 days of any request.
4. Performance Indicator for Project C.1 (second stage): Creation of MCA BioTech Commercialization Institute as a subsidiary or Affiliate to the MCA Foundation. The MCA Foundation shall provide each of the following to the City:
- (a) Two electronic copies of all documents necessary to establish the MCA BioTech Commercialization Institute as verification of its creation.
 - (b) MCA Foundation will demonstrate creation of MCA BioTech Commercialization Institute through an organizational plan adopted by the MCA Foundation and demonstrated funding in its annual budget.
 - (c) Metrics:
 - (i) Oral and written annual report to City Council to include operational updates on items listed below among others and audited financial statements
 - (ii) MCA Translational Research Joint Venture
 - 1. Formally create one or more joint ventures between the MCA Foundation and regional institutions of higher education, including formal organizational documents (possibly as part of the MCA BioTech Commercialization Institute); memoranda of understanding for grant funding distribution, expense reimbursement, licensing and royalty arrangements; and Confidentiality Agreements
 - 2. Determine themes for 2-4 “Convergence Programs” for inter-institutional collaborative research, via collaborative workshops, research and other efforts
 - 3. Identify 1-3 research projects per Convergence Program
 - 4. Identify research Co-Chairs from each university for each research project identified
 - 5. Identify possible funding sources for the research efforts
 - 6. Research market applicability of proposed projects from each Convergence Program
 - (iii) MCA Commercialization Center
 - 1. Screen university Intellectual Property for market applicability
 - 2. Develop the Commercialization Center in accordance with the plans described in the Performance Indicator for Project B above
 - 3. MCA Bio-Competitiveness Group
 - a. Develop a project plan for enhancing the competitiveness of the region in the biomedical cluster (as defined in the “planning” efforts described above in the Performance Indicator for Project B)
 - b. Execute the project plan developed as part of Project B
 - c. Organize regional Bio-Medical Roundtables. Organize a “Biotech on the Border” conference as often as deemed necessary.

5. Performance Indicator for Project C.2 -- Clinical Research Organization (CRO) to establish, launch and grow operations of a local clinical trials network:
- (a) The MCA Foundation will provide an annual written report to the City on the progress of the CRO.
 - (b) MCA Foundation will demonstrate creation of CRO through an organizational plan adopted by the MCA Foundation and demonstrated funding in audited annual financial statements (possibly as part of the MCA BioTech Commercialization Institute).
 - (c) Metrics
 - (i) Oral and written annual report to City Council to include operational updates on items listed below.
 - (ii) Inform and organize the local provider network on clinical trials to obtain agreement of their participation in the clinical trials.
 - (iii) Create a database of participating local providers with the providers' patient case mixes.
 - (iv) Continually update local provider network.
 - (v) Implement or renew at least two clinical trials in the region in the region after year 2 of operations.
 - (vi) Monitor patient/provider compliance with clinical trials requirements and protocols.
 - (vii) Work with providers and patients to improve where non-compliance is identified.
6. Performance Indicator for Project C.3 -- Proof of Concept Fund:
- (a) MCA Foundation will provide annual reports to the City on the number of applicants to the Proof-of-Concept fund and the outcomes of their request, followed up with a presentation of the report findings. Applicants that do receive funding will provide annual reports to both the MCA Foundation and City.
 - (b) The defined set of qualifications that will be used to grant funding to start ups and any amendments to these standards on an annual basis.
 - (c) Metrics:
 - (i) Oral and written annual report to City Council to include operational updates on items listed below
 - (ii) Number of applicants to the Proof-of-Concept fund and the outcomes of their request. At least two applications per year, beginning in FY 2013.
 - (iii) For applicants that receive funding, the non-confidential portions of their required annual report to the MCA Foundation will be provided to the City.
 - (iv) The City may also elect to place a staff person on the proof-of-concept fund selection panel.
7. Performance Indicator for Project D -- Land Acquisition:
- (a) The MCA Foundation will provide a map, Property Identification Numbers (PIDs), and legal descriptions of all properties in the MCA area that have been purchased by the MCA Foundation or Affiliates.
 - (b) Where lease income is immediately possible, the financing plan for the land acquired.
 - (c) Copies of the deeds for any acquired properties as requested.

EXHIBIT C

Request for Grant Disbursement

[Addressed to Proper City Person]

Date: _____

In accordance with the terms of the Economic Development Program Grant Agreement dated _____, 2012 (the "Agreement") between the **CITY OF EL PASO**, a Texas home rule municipal corporation (the "City"), and the **MEDICAL CENTER OF THE AMERICAS FOUNDATION**, a Texas non-profit corporation (the "Applicant"), the undersigned authorized representative of the Applicant hereby requests disbursement of the Grant amount for (1) the FY/2011 and/or FY 2012 Grant Amount, as specified in the Agreement, or (2) for Fiscal Years from and after FY 2013, the Grant Amount for the quarter ending [August 31/November 30/February 28 or May 30], 20____. This Request is submitted at least thirty (30) days prior to the scheduled Grant payment date.

No Event of Default has occurred and is continuing and the Applicant is not currently in default with respect to any of the terms or conditions of the Agreement which would prevent disbursement of the requested Grant amount. To the extent applicable, Applicant has attached building permits and certificates of occupancy issued since the last Request for Grant Disbursement. Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Agreement.

**MEDICAL CENTER OF THE AMERICAS
FOUNDATION**

By: _____
Name: _____
Title: _____