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

CITY CLERK DEPT
07 JAN -8 PM 1:49

DEPARTMENT: **Street Department**

AGENDA DATE: **January 16**

CONTACT PERSON/PHONE: **Daryl W. Cole 621-6750**

DISTRICT(S) AFFECTED: District 8

SUBJECT: - Introduction of Ordinance

An ordinance authorizing the City Manager to sign an agreement by and between the Chihuahuita Neighborhood Association and the City of El Paso for the maintenance and other services associated with the establishment of the Chihuahuita Serenity Garden.

BACKGROUND / DISCUSSION:

Chihuahuita Serenity Garden is located in a portion of Lot 12, Block D, Santa Fe Addition, El Paso County, Texas.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Discretionary funding in an amount not to exceed $3,000 will be provided by District 8. DeptID 01010008-City Council District 8, fund 01101-general fund, account 504420-Council Special Projects; in-kind services to be performed by the Street Department.

BOARD / COMMISSION ACTION:

N/A

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

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

DEPARTMENT HEAD: _____

CC: Pat Adauto, Deputy City Manager, Development and Infrastructure Services

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO._____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT BY AND BETWEEN THE CITY OF EL PASO AND THE CHIHUAHUITA NEIGHBORHOOD ASSOCIATION FOR THE MAINTENANCE OF THE PROPERTY LOCATED AT A PORTION OF LOT 12, BLOCK D, SANTA FE ADDITION, EL PASO, TEXAS, TO BE KNOWN AS THE CHIHUAHUITA SERENITY GARDEN.

WHEREAS, Partner desires to enhance its neighborhood and improve the quality of life of its residents and the citizens of El Paso by participating in the conversion of the property located at a portion of Lot 12, Block D, Santa Fe Addition, El Paso County, Texas (the "Property") into a community garden suitable for passive use (the "Project"); and,

WHEREAS, the Project will result in a community garden known as the Chihuahuita Serenity Garden, which will among other things, positively address some of the concerns raised in the Chihuahuita Neighborhood Plan (the "Plan") approved by the City Council on March 2, 2004, including protecting the characteristics of the neighborhood; and,

WHEREAS, Partner wishes to participate in the Project in furtherance of the Plan; and,

WHEREAS, the City finds a public purpose in promoting the public health, safety, morals and general welfare of its citizens; and

WHEREAS, the City Council finds that the execution of such an Agreement upon the terms and conditions hereinafter set forth would be in the public interest.

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

THAT the City Manager be authorized to sign all documents pertaining to the Agreement attached hereto as Exhibit "A" and incorporated by reference by and between the City of El Paso and the Chihuahuita Neighborhood Association (the "Partner") for the maintenance of the property located at a portion of Lot 12, Block D, Santa Fe Addition, El Paso County, Texas, for a term of three (3) years not to be extended beyond thirty (30) years, with non-monetary consideration of certain in-kind public benefit contribution and maintenance provided by the Partner, and THREE THOUSAND DOLLARS AND NO/100 ($3,000.00) in discretionary funds for City Council Representative for District 8 provided by the City, as outlined in greater detail in Exhibit "A".

CITY CLERK DEPT.
07 JAN -8 PM 1:49

Passed and approved this _____ day of _____, 200___.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Daryl Cole, Director
Streets Department

CITY CLERK DEPT.
07 JAN -8 PM 1:49

CITY OF EL PASO
STREETS DEPARTMENT
Two Civic Center Plaza
El Paso, Texas 79901

CITY CLERK DEPT.
07 JAN -8 PM 2:00

This Agreement ("Agreement") between the City of El Paso, Texas, a home rule municipal corporation ("City") and

Name of Group or Organization:

Chihuahuita Neighborhood Association, a Texas Corporation,
Contact Person's Last Name: Rodriguez **First Name:** Mike

Address: _____ _____ **Zip:** _____

Day Phone # _____ **Night Phone #** _____ **FAX No.** _____

Name of Community Garden: Chihuahuita Serenity Garden

Community Garden Location: **A portion of Lot 12, Block D, Santa Fe Addition, El Paso County, Texas, as more particularly described in Exhibit "A" (the "Property").**

("Partner"), is made effective the date of execution written below.

WHEREAS, Partner desires to enhance its neighborhood and improve the quality of life of its residents and the citizens of El Paso by participating in the conversion of the Property into a community garden suitable for passive use ("the Project"); and,

WHEREAS, the Project will result in a community garden known as the Chihuahuita Serenity Garden, which will among other things, positively address some of the concerns raised in the Chihuahuita Neighborhood Plan (the "Plan") approved by the City Council on March 2, 2004, including protecting the characteristics of the neighborhood; and,

WHEREAS, Partner wishes to participate in the Project in furtherance of the Plan and Partner's overall corporate mission; and,

WHEREAS, the City finds a public purpose in promoting the public health, safety, morals and general welfare of its citizens; and

WHEREAS, the City Council finds that the execution of such an Agreement upon the terms and conditions hereinafter set forth would be in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree and covenant as follows:

1.0 The Partner will provide maintenance and other services ("Services") on City property described above.

2.0 Partner will begin providing the Services on January 31, 2007.

3.0 Partner will provide the following Services on the referenced Property:

- ☐ Pick up litter and debris four (4) times per month.
- ☐ Conduct quarterly clean-up/fix-up activities.
- ☐ Notify Streets Department ("Department") personnel, El Paso Police Department or the El Paso Fire Department of damage to community garden facilities, irrigation equipment, vandalism, or graffiti.
- ☐ Notify Police in cases of violations of law.
- ☐ Provide landscape and irrigation system design for City approval.
- ☐ Install irrigation system, including all materials, subject to City inspection.
- ☐ Donate plants, trees, benches, tables, trash receptacles, and other Project amenities when approved by the Department.
- ☐ Install plants, trees and other components of the garden, after acquiring Department approval, and maintain the Chihuahuita Serenity Garden, including weeding, fertilizing, trimming and replacement of the plants, trees, damaged or malfunctioning irrigation equipment and other components of the garden, as needed, in strict accordance with the Tree Care Manual and any applicable City ordinance and resolution.
- ☐ Notify Department of changes in name, address, and phone # of contact person.
- ☐ Observe the safety instructions listed on Exhibit B in performing maintenance services on the Property.
- ☐ Observe all community garden rules and regulations, attached hereto as Exhibit C.
- ☐ Other Services to be donated to the City: _____
- ☐ Remove any improvement, at its sole cost and expense, upon notice from the City if Partner establishes any improvements that materially interfere with any City operations or activities.

4.0 The Partner and all participants will comply at all times with the safety instructions attached hereto as Exhibit B.

5.0 The Partner and all participants are volunteers, and the Services are rendered to the City as a gift. The Partner and the participants shall not receive any compensation or benefits from the City, other than as expressly set forth in this Agreement. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee

CITY CLERK DEPT.
07 JAN -8 PM 2:00

6.0 The City agrees to do the following:

- Perform necessary major repairs such as in the case of a broken water main break.
- Provide recognition to the Partner.
- Provide information regarding specifications required by City Code and technical assistance where possible for the Project.
- Permit the installation of improvements.
- Provide water to the irrigation system.
- Allow the Partner to conduct fund raising activities in the community garden per year for the benefit of the community garden, approved by the Director of the Department.
- Provide a sidewalk extending the length of the Property on Charles Street.
- Prepare the site by grading and tilling it, and by bringing in new dirt so that the soil does not consist solely of clay, if necessary.
- Provide discretionary funds from the District #8 account in an amount not to exceed THREE THOUSAND DOLLARS AND NO/100 ($3,000.00), to assist with the development of the community garden, as long Partner has provided proof of its tax exempt status to the City prior to the release of referenced funds to Partner.

7.0 The Parties expressly agree that the City's obligation to perform under this Agreement is subject to the availability of funds and staff, and is wholly within the discretion of the Director of the Department. For purposes of clarification, the Joint Resolution between the City and the Public Service Board transferring Property to the City placed oversight responsibility in the City's Department of Parks and Recreation, and that oversight responsibility now sits with the Department (the Streets Department as previously defined herein).

7.1 Except as provided for herein, this Agreement in every sense shall be without cost to the City for the development, general maintenance or improvement of the Property, unless the City is specifically made responsible for such development, maintenance or improvement herein. It shall be the sole responsibility of the Partner to keep, maintain, repair and operate the entirety of the Property and all improvements placed thereon by Partner at Partner's sole cost and expense.

7.2 Any improvements to the Property shall be approved in advance by the Department and shall comply with all local, state and federal ordinances, laws and regulations.

8.0 Funding.

8.1 Partner acknowledges and warrants that it shall raise the funds necessary for the design and installation of all community garden infrastructure (except for a water meter) and amenities. In the event that Partner determines that it is unable to raise

07 JAN -8 PM 2:00
CITY CLERK DEPT.

the necessary funds for this Project within three years of the effective date of this Agreement, Partner may provide a thirty (30) day written notice to and meet with the Director on request of the latter to examine the circumstances and arrive at a course of action.

8.2 The City shall provide monetary support of $3,000.00 available from the discretionary funds for City Council Representative District 8, for which Partner acknowledges receipt, toward costs of the Project. The City reserves the right to provide additional monetary support if deemed appropriate by City Council.

9.0 Term. This Agreement shall remain in effect for a period of three (3) years, and may be extended for successive three-year terms, by written agreement of both Parties, for a total period not to exceed thirty (30) years.

10.0 Improper Activity. Partner shall not conduct any activity on the Property that violates any federal or state law or regulation or any City ordinance. Partner shall attempt to prevent disorder and conduct amounting to a nuisance but shall not be required to hire additional personnel to patrol or guard the Property. The Property shall not be used for any purpose except as contemplated by this Agreement. In addition, Partner acknowledges that the use of the Chihuahuita Serenity Garden is non-exclusive, and constitutes a limited public forum. Partner may weed, trim, fertilize and otherwise maintain the Property without prior City approval provided such work is performed in accordance with City Code, including, but not limited to the Tree Care Manual; but otherwise no structure of any kind shall be placed thereon, and no obstructions temporary or permanent, shall be placed thereon, which interfere with the right of public utilities, City departments, or the public.

11.0 INDEMNITY. IN THE USE OF THE PROPERTY, AND IN THE EXERCISE OF THE RIGHTS HEREIN GRANTED, PARTNER SHALL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, REGARDLESS OF CAUSE, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH PARTNER'S USE OF THE PROPERTY UNDER THIS AGREEMENT.

11.1 Partner further agrees to handle and defend at its own expense, on behalf of the City and in the City's name, any claim or litigation in connection with any such injury, death or damage.

12.0 Termination.

07 JAN -8 PM 2:00
CITY CLERK DEPT.

12.1 The City Manager may terminate the Agreement upon one hundred twenty (120) days written notice to the Partner. All rights of Partner in the Property shall then be terminated, and Partner shall be entitled to no reimbursement or compensation under the Agreement.

12.2 Either party may terminate this Agreement by sending written notice to the other if the other is in default in a matter of serious importance to the aggrieved party. Termination shall be without prejudice to any obligation by one party to the other which shall have accrued and be owing prior thereto.

12.3 Any illegal use of or illegal activity by Partner at the Property, or the City's need for the Property to secure the immediate needs of the public health, safety or welfare, or any public necessity, acts of God, or other circumstances beyond the control of the City, shall be cause for immediate termination of this Agreement. Partner shall take immediate steps after reasonable notice from the City to prevent any illegal use or illegal activity by Partner's members, guests or invitees. If Partner fails to take such immediate steps to prevent any illegal use or illegal activity by Partner, guests or invitees within 24 hours after reasonable notice, the City Manager may terminate this Agreement and take possession and all rights of Partner in and use of the Property shall then terminate. The City may terminate this Agreement without liability of any type to Partner, and Partner forever releases City from any and all claims whatsoever occasioned by cancellation pursuant to this paragraph.

12.4 In addition, if Partner shall cease to maintain the Property for the purposes herein contemplated for a period of thirty (30) days after written notice by the City, or if Partner defaults in any of Partner's obligations under this Agreement and fails to correct such default within ten (10) days after written notice to do so, the City Manager may terminate this Agreement, and all rights of Partner in the Property shall then terminate. Any waiver by the City of any breach of any of Partner's obligations shall not be deemed a continuing waiver and shall not prevent the City from exercising any remedy it may have for any succeeding breach of this same or another obligation of Partner. The grant of this Agreement is subject to the governmental powers of the City.

12.5 Upon termination of this Agreement, for whatever reason, the fixtures and all improvements shall become the property of the City.

12.6 In the event that Partner and the City are unable to agree upon a course of action under Section 8.1 hereinabove, Partner may terminate this Agreement upon the giving of a thirty (30) day written notice to the Director.

07 JAN -8 PM 2:00
CITY CLERK DEPT.

12.7 Should Partner be unable to design and install the irrigation system within twelve months of the execution of this Agreement, such inability shall be considered an event of default.

12.8 Regardless of how termination occurs, Partner shall comply with each of the following requirements. In the event of default described in section 12.7 hereinabove, Partner shall tender to the City a cashier's check or money order payable to the City in the amount of $3,000.00, or such other greater amount that has been provided by the City to Partner pursuant to this Agreement or any amendment to this Agreement. Further, Partner shall provide to the City a plan as to the disposition of all of the other funds collected for the Project. This Agreement shall be finally terminated upon the City Manager of the City of El Paso's approval of Partner's fund disposition plan.

13.0 Liens And Encumbrances. Partner shall not give or permit any liens or encumbrances on the Property, and upon termination of the Agreement, shall peacefully surrender the Property to the City free of all such liens or encumbrances. Partner shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Property, together with reasonable attorney's fees, costs and expenses incurred by the City negotiating, settling, defending or otherwise protecting against such liens or encumbrance.

14.0 Miscellaneous.

14.1 Maintenance of Property: Partner shall be responsible for all maintenance of the Property, including, but not limited to, the following:

14.1.1 Cutting and trimming all vegetation within the Property as often as necessary, in accordance with Section 9.04.360 of the City Code, or other applicable ordinance.

14.1.2 Collection and removal of litter and debris that accumulates on the Property, on a weekly basis or more as needed, in accordance with 9.04.340 of the City Code, or other applicable ordinance.

14.2 Laws and Ordinances: Partner shall comply with all statutes, laws, codes and ordinances applicable to Partner's use of the Property. In addition, Partner shall obtain all required permits and inspections and pay the necessary permit fees required for Partner's activities at the Property.

14.3 Handicapped Accessibility Standards. Partner agrees that in the performance of this Agreement, that they will comply with the Americans with Disabilities Act ("ADA"), as may be required by law. Partner, if required, must follow the

CITY CLERK DEPT.
07 JAN -8 PM 2:00

Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

14.4 Right of Inspection and Audit. Partner shall permit the City's auditors, authorized representatives or agents to examine, inspect and have access to Partner's records at all reasonable times in order to assure that each of the provisions of this Agreement is being performed in a manner satisfactory to the City. Partner shall provide financial statement to the City which shall among other things, verify Partner's tax exempt status, and Partner's capital improvement fund status no later than December 31st in a form satisfactory to the City.

14.5 Outside Lighting: Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants on other property in the abutting neighborhoods. If this provision is violated, the City may require any such lighting to be extinguished, changed or removed at Partner's expense.

14.6 Garbage and Trash: Partner shall provide for the adequate and proper handling and disposal of all trash, garbage and other refuse caused by its activities at the Property. Piling of boxes, cartons, trash or similar items at the Property shall not be permitted.

14.7 Utilities: Partner shall assume and promptly pay for all costs or charges for utility services, except for water as described herein, that Partner requests be furnished and used in connection with its activities at the Property during the term of this Agreement, including the cost of extending utility lines within the Property, and connecting such lines and setting meters.

14.8 Signs: This Agreement does not permit commercial signage at the Property.

14.9 Taxes: Partner shall pay the taxes, if any, on all improvements and personal property it places upon the Property or uses in connection with its activities and use of the Property on the same basis as if the land were in private ownership, regardless of any other provisions hereof.

14.10 Successors and Assigns: This Agreement, or any interest therein, is not assignable without the prior consent of the City Manager. In the event of any assignment, Partner shall remain primarily liable for the payment of all monies due hereunder and for the performance of all its other obligations as herein stated. Any assignee shall be bound by all of the obligations and provisions as herein stated in this Agreement. In addition, Partner shall not sublet the Property.

CITY CLERK DEPT.
07 JAN -8 PM 2:00

14.11 Notices: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City: City of El Paso
ATTN: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to: City of El Paso
ATTN: Director
Streets Department
7969 San Paulo
El Paso, Texas 79907

Partner: Chihuahuita Neighborhood Association
ATTN: Mike Rodriguez, President
470 Charles Street
El Paso, Texas 79901

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

14.12 Law Governing: The laws of the State of Texas shall govern the validity, performances and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

14.13 Entire Agreement: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

14.14 Severability: The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

14.15 Authorization to Enter Agreement: The individual signing this Agreement acknowledges that he or she is authorized to do so and said individual further warrants that he or she is authorized to commit and bind the party to the terms and conditions of this Agreement.

14.16 Dissolution/Reentry: Should Partner re-organize, change its name, dissolve as an entity or cease to operate as an entity, it shall provide written notice of such event to the City ninety (90) days prior to such event. Such event shall terminate this Agreement.

15.0 Environmental. Partner warrants and represents that its intended activity at the Property will not violate applicable environmental laws. Partner shall comply with all federal and

07 JAN -8 PM 2:00
CITY CLERK DEPT.

state laws including licensing requirement for the application of herbicides and pesticides at the Property. Partner shall not cause or permit the Property or Partner to be in violation of, or do anything or permit anything to be done which will subject the City or the Property or the site to any remedial obligations under, any applicable environmental laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property. Partner shall take all steps necessary to determine during the term of this Agreement that no hazardous substances or solid wastes are being disposed of or otherwise released on or to or from the Property. The City may verify compliance with this Section at any time and without notice by inspecting Partner's use and activities at the Property and may inspect Partner's pertinent records during regular business hours with reasonable notice to Partner. Any violation of this Section by Partner shall constitute an "event of default" under this Agreement, which cannot be cured.

16.0 Additional Remedies Upon Default. In the event the Partner shall at any time default in the performance of any of the terms and conditions of this Agreement, the City may declare the Partner in default of this Agreement, may deny use or access of the Property to the Partner and may sue for all damages under this Agreement or arising out of any violation hereof, without prejudice to any remedies that it otherwise has for the default. In the event of default, the Partner shall vacate the Property within five (5) days, or such other period indicated in the City's written notice of default to Partner. In addition to the above remedies, the City shall have all rights to which it is entitled either in law or in equity, and shall be entitled to its reasonable attorneys' fees and costs incurred as a result of any default.

17.0 Texas Tort Claims Act. Partner expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. Partner further expressly agrees that every act or omission of the CITY which, in any way, pertains to or arises out of this Agreement falls within the definition of a governmental function.

(signatures appear on following page)

CITY CLERK DEPT.
07 JAN -8 PM 2:00

WITNESS THE FOLLOWING SIGNATURES:

CITY OF EL PASO

_____

Joyce A. Wilson
City Manager

CHIHUAHUITA NEIGHBORHOOD ASSOCIATION

By: _____
Mike Rodriguez
President

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONENT:

_____
Daryl W. Cole, Director
Streets Department

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this day of _____, 2007 by Joyce A. Wilson as City Manager, of the City of El Paso.

_____
Notary Public in and for the State of Texas

CITY CLERK DEPT.
07 JAN -8 PM 2:01

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument is acknowledged before me on this ~~28th~~ 12th day of January, 2007, by Mike Rodriguez, President of Chihuahuita Neighborhood Association.

Rosemary G. Borrego
Notary Public in and for the State of Texas

EXECUTED this 12th day of January, 2007.

ROSEMARY G. BORREGO
Notary Public
State of Texas
My Commission Expires
April 15, 2007

EXHIBIT B - SAFETY INSTRUCTIONS

The Partner and all participants **must** observe the following safety instructions at all times:

1. Work only during daylight hours and fair weather.

2. Stay away from mowing operations and any other maintenance or construction activities.

3. Participants under 16 years of age must be supervised by a responsible adult. Participants under ten years of age must be supervised by at least one adult for each five participants.

4. Do not allow children under 12 years of age to work near heavily traveled streets.

5. Be aware of potential hazards such as broken glass, snakes, insects, noxious weeds, and hazardous materials.

6. Wear protective clothing, including hard-soled shoes and gloves.

7. Do not attempt to remove known or suspected toxic/hazardous substances. Do not pick up discarded syringes, needles, suspicious containers, or suspicious items.

8. Report discarded syringes, needles, suspicious containers, and suspicious items to the appropriate Department Maintenance Supervisor, or the appropriate Police Regional Command Center.

9. Report broken equipment or any other potential hazards to the appropriate Department Maintenance Supervisor. Also, call the appropriate maintenance section if trash bags need to be picked up.

10. Know your community garden rules and be safety conscious at all times.

07 JAN -8 PM 2:00
CITY CLERK DEPT.

EXHIBIT "C"

COMMUNITY GARDEN RULES AND REGULATIONS

1. Garden will be closed from 10:00 P.M.to 6:00 A.M.
2. Littering and dumping of waste is prohibited.
3. Glass beverage containers are prohibited.
4. Alcoholic beverages are prohibited.
5. Permits are required for the sale of goods or services.
6. Amplification permit is required for public addresses.
7. It is illegal to mark, damage, or destroy City property.
8. Camping is prohibited.
9. The use of any projectile such as firearms, air rifles, sling shots, driving golf balls, rock throwing, etc. is prohibited.
10. All pet droppings must be removed by owner; dogs must be on a leash.
11. Motor vehicles are prohibited except in designated parking areas.

CITY CLERK DEPT.
07 JAN -8 PM 2:01