

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

DEPARTMENT: City Development

AGENDA DATE: Regular Agenda – February 19, 2013

CONTACT PERSON/PHONE: Mathew McElroy, Director, 541-4193

DISTRICT(S) AFFECTED: DISTRICT 8

SUBJECT:

Discussion and action on a resolution that the Mayor be authorized to sign, on behalf of the City of El Paso, an Amendment to Interlocal Agreement between the City of El Paso (the “City”) and the El Paso Downtown Management District (the “DMD”) for the DMD to manage the City’s wayfinding program on City owned kiosks and certain trash bins in the Downtown area and to implement and maintain the submittal of special privilege applications online and to procure IT host services for these applications, subject to the terms and conditions in the Amendment to the Interlocal Agreement.

(All Districts) [City Development Department – Mathew McElroy, Director 541-4193]

BACKGROUND/DISCUSSION:

On February 11, 2011 the City and DMD entered into an Interlocal Agreement which allowed the DMD to perform certain supplemental sanitation services in the Downtown Area. On November 15, 2011, the DMD expanded its services in the Downtown area by providing expedited special privilege permitting services. City staff is now recommending that the scope of services for the DMD again be expanded to allow the DMD to administer a wayfinding program for kiosks and certain trash bins in the downtown area. The DMD is also implementing the submittal of special privilege applications through an online system.

PRIOR COUNCIL ACTION:

Yes. City Council approved an Interlocal Agreement with the DMD on February 11, 2011 and an amendment on November 15, 2011.

AMOUNT AND SOURCE OF FUNDING:

General Fund

BOARD/COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____

RESOLUTION

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

That the Mayor is hereby authorized to sign, on behalf of the City of El Paso, an Amendment to Interlocal Agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "DMD") for the DMD to manage the City's wayfinding program on City owned kiosks and certain trash bins in the Downtown area and to implement and maintain the submittal of special privilege applications online and to procure IT host services for these applications, subject to the terms and conditions in the Amendment to the Interlocal Agreement.

APPROVED AND ADOPTED this _____ day of February, 2013.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Director
City Development Department

Jay Banasiak, Director
Mass Transit Department

Kurt Fenstermacher, Director
Environmental Services
& Code Enforcement

STATE OF TEXAS)
)
COUNTY OF EL PASO)

SECOND AMENDED INTERLOCAL AGREEMENT

This Interlocal Agreement, as amended, is entered into on the _____ day of _____, 2013, by and between the CITY OF EL PASO, a Texas home-rule municipal corporation (“the City”) and the El Paso Downtown Management District (“DMD”), a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375. The City and the DMD may be referred to in this Amendment individually as “Party” and collectively as the “Parties.”

The Parties hereby agree to amend their current Interlocal Agreement dated February 1, 2011 (the “Interlocal”), subject to the following terms and conditions. The Parties agree that the additional terms and conditions will apply to the Interlocal unless further modified or amended by the Parties.

WHEREAS, on or about February 1, 2011, the Parties entered into an Interlocal Agreement implementing activities to preserve, maintain, and enhance the economic health and vitality of the downtown El Paso area through public outreach development, downtown marketing services, and supplemental sanitation services, with the governmental purpose of stimulating commercial development and business activity in the downtown area; and

WHEREAS, the Parties now desire to amend the Agreement to supplement marketing efforts in El Paso’s downtown area by having the DMD manage the City’s wayfinding program and upgrade certain trash bins with the hardware needed for the placement of marketing materials, and perform maintenance on city owned kiosks, in consideration for these supplemental services the City agrees to increase the payment from \$350,000 to \$500,000; and

WHEREAS, the Parties now desire to amend the agreement to supplement the special privilege permitting process by having the DMD implement and maintain IT services, which allow for the submittal of an online special privilege permit application and procure additional IT services to host a database of these applications, in consideration for these added services the City agrees to increase the annual flat fee from \$5,000 to \$6,500 and increase the rate for applications which exceed the 13 applications covered under the annual flat fee from \$385.00 to \$580.00.

NOW THEREFORE, KNOW ALL BY THESE PRESENT THAT :

For and on behalf of the general public good and the mutual covenants and promises hereinafter set forth in this Agreement, the Parties agree as follows:

ARTICLE 1. BACKGROUND AND PURPOSE

Section 1.01 Authorization

This amendment is executed by the Parties in accordance with Section 9.6 of the Interlocal Agreement.

Section 1.02 Purpose

The Parties execute this Amendment for the following purposes:

1.02.1 To supplement the marketing efforts by the City in El Paso's Downtown area by incorporating additional marketing resources to display promotional and way-finding information and promote maintenance of these City-owned devices.

1.02.2 To supplement and make more efficient and convenient the promotion of downtown events and activities in downtown and throughout the city by having the DMD serve as a conduit for city-wide marketing efforts focused on downtown events.

ARTICLE 2. ADDITIONS TO THE "SCOPE OF SERVICES"

Section 2.01 Addition of Responsibilities

2.2.5 Content Management for Wayfinding Kiosks to supplement the broad-based marketing program. The City and the DMD agree that the DMD will be the lead entity responsible for providing content on the existing city-owned kiosks located in the Union Plaza and San Jacinto Park within public-right-of-way as shown in Exhibit A (a map). The DMD will be responsible for the following:

(A) Provide materials that will be placed on the kiosks that is in compliance with the way-finding sign definition approved by the City Council. Material is to be placed on all the kiosks within sixty (60) calendar days of the execution of this Amendment and will be changed out at least once in a calendar year. All material will follow the sign definition standards, as provided for in the El Paso City Code.

(B) Low-level Maintenance for the kiosks content area is to be provided by the DMD to include replacement of the content, removing graffiti, painting the kiosks at least once every three (3) years. The DMD will inspect the kiosks at least once a quarter and report any deficiencies to City staff. Damaged or defaced signs will be replaced by the DMD.

(C) DMD staff will receive training and protocol guidelines from appropriate City staff on the proper way and necessary tools to place content on the kiosks and will follow the City's protocol in installing such content. Upon request, the DMD can provide City staff samples of the materials that will be placed on the kiosks four (4) weeks in advance of such placement.

(D) Secure funding for privately sponsored marketing materials. Such materials will be replaced by the DMD once a year. Applicants that request additional replacement of privately sponsored marketing materials may be responsible for the cost of materials and their replacement.

(E) Develop the standards for the material type, such as weight of paper and dimensions of total content area, for all materials to be placed on the kiosks, and develop a schedule for when content will be changed out if this is more frequently than once annually.

(F) Half (1/2) of the kiosks in the Downtown area will be made available for City sponsored events if a four-week notice is given to the DMD.

(G) Annual report. On a yearly basis, provide an annual report to the City Manager detailing its performance of activities under this agreement.

City Responsibilities

(A) Ensure the hardware of the kiosks is in working order within sixty (60) calendar days of execution of this amendment and provide training on the protocol guidelines to place the materials on the kiosks appropriately in that timeframe.

(B) High-level Maintenance for the kiosk infrastructure. If an existing kiosk is damaged beyond capabilities of the DMD—such as by a car accident—taking the appropriate measures to replace or remove the kiosks.

(C) Replacement of kiosks should the kiosks be damaged beyond repair as funding may be available.

(D) For content requested by the City to promote city-sponsored events only, the City shall provide the printed materials to be placed on the kiosks at least four (4) weeks in advance of the requested date of placement. The City can opt to reimburse the DMD for printing services and design and placement costs for the marketing materials.

2.2.6 Content Management for Big-Belly trash bins located in the Downtown area to supplement the broad-based marketing program. The City and the DMD agree that the DMD will be the lead entity responsible for providing content on the existing Big-Belly trash bins located throughout Downtown El Paso.

DMD Responsibilities

1. DMD will pay for half (1/2) the cost of the appropriate hardware for a minimum of one-fourth (1/4) of the Big-Bellies that currently exist in the Downtown area within one year after this Amendment is approved by the El Paso City Council. Every year thereafter, the DMD will pay half (1/2) the cost of the hardware for a minimum of a quarter (1/4) of the inventory in existence in 2012 so that in four (4) years all of the Big-Belly trash bins located throughout Downtown El Paso have appropriate hardware for marketing promotion.

2. At least one-fourth (1/4) of the available marketing space will be used for anti-littering campaign materials for at least six (6) months per annum. All material will follow the sign definition standards, as provided for in the El Paso City Code.

City Responsibilities

1. City will pay half (1/2) the cost of hardware for the appropriate hardware to be installed on one-fourth (1/4) of the Big-Bellies downtown within the first year of signing this agreement. Every year thereafter, the City will pay half (1/2) the cost of the hardware for a minimum of a quarter (1/4) of the inventory in existence in 2012 so that in four (4) years all of

the Big-Belly trash bins located throughout Downtown El Paso have appropriate hardware for marketing promotion. The City will install the hardware on the Big-Belly trash bins.

2.2.7 Direct marketing services for downtown events. Upon request from the City, the DMD may provide direct marketing-related services to promote downtown events sponsored and administered by the City as part of the Downtown marketing plan, in accordance with all applicable laws. The DMD will invoice the City for direct marketing services under 2.2.7.

2.5 Online special privilege permit application. The DMD will implement and maintain IT services, which allow for the submittal of an online special privilege permit application and procure additional IT services to host a database of these applications.

ARTICLE 3. AMENDMENT TO THE “ALLOCATION OF EXPENSES AND CONTRIBUTION FOR SERVICES”

Amend Section 3.2 to read: In consideration of the DMD performing the supplemental sanitation services as set forth in Section 2.2.3, the City hereby agrees to pay an amount not to exceed Five Hundred Thousand and No/100th Dollars (\$500,000.00), representing no more than fifty percent (50%) of the cost of the performance of said services under the term of this Agreement ("City's proportionate share"), which will be paid out according to the following payment schedule:

Amend Section 3.2 (C) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

Amend Section 3.2 (D) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

Amend Section 3.2 (E) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

Amend Section 3.4 to read: (B) the City agrees to pay the DMD an annual flat fee of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00) which covers the DMD's fixed costs and the processing of up to thirteen (13) applications per year. Applications processed by the DMD during a contract year in excess of thirteen (13) will be paid at a rate of Five Hundred Eighty and No/100 Dollars (\$580.00) per excess application. The City will pay the DMD the initial annual fee within thirty (30) days of signing this Amendment, and will pay for each subsequent year within thirty (30) days after the anniversary of the date on which this amendment is executed. Should the applications processed by the DMD during a contract year exceed thirteen (13), the City will pay the DMD the additional amount owed for the processing of the excess application(s) for the previous year at the time that the annual payment for the preceding year is paid. The DMD will document any additional amount owed by the City on its annual report filed pursuant to section 2.2.4(I).

IN WITNESS HEROF, the City and DMD have each caused this amendment to be signed and delivered by its duly authorized representative.

(Signatures follow on the next page)

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Matthew K. Behrens
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Director
City Development Department

Jay Banasiak, Director
Mass Transit Department

Kurt Fenstenmacher, Director
Environmental Services
& Code Enforcement

EL PASO DOWNTOWN
MANAGEMENT DISTRICT ("DMD")

By: _____
Robert S. Ayoub, President
Board of Directors

ATTEST:

By: _____
Michael D. McQueen, Secretary

Interlocal

Approved

February 11, 2011

(Redlined)

NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:

For and on behalf of the general public good and the mutual covenants and promises hereinafter set forth in this Agreement, the parties agree as follows:

1.0 CONTRACTUAL RELATIONSHIP

1.1 The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

1.2 The DMD acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the DMD to any obligation other than the obligations set forth in this Agreement.

2.0 SCOPE OF SERVICES

2.1 The parties acknowledge and expressly agree that, in all things relating to this Agreement, the City and DMD are performing governmental functions, as defined by the Texas Torts Claims Act. The parties hereby agree that the City and the DMD enter into this Agreement as governmental entities for the purpose of performing a governmental function.

2.2 DMD Responsibilities:

2.2.1 Public Outreach and Development. The DMD will perform the following economic development services within the DMD area (as shown in Exhibit "A"), in connection with the City's downtown revitalization efforts:

(A) Public outreach with various stakeholders in the downtown El Paso area to improve City communication with other public entities and the private sector on downtown-related City capital projects;

(B) Conducting of meetings with potential private investors in the downtown area; and

(C) Identification of private and public funding and/or leveraging of private funds to enhance downtown-related City capital projects, streetscape enhancements, and coordination of complementary private commercial redevelopment activities.

2.2.2 Downtown Marketing Services. The DMD will perform the following economic development services within the DMD area in connection with the City's downtown revitalization efforts:

(A) Develop and implement a broad-based marketing program, which will include marketing, publicity, and media contact for the primary purpose of promoting events and activities located in the downtown area that will enhance commercial activity and attract commercial redevelopment in the same;

(B) Create a Downtown Census, to consist of data and demographic information on various types and numbers of downtown users (e.g., visitors, residents, employees, employers) to be made available to the City for its long-range planning efforts for downtown revitalization; and

(C) Operate, maintain, and update the "Downtown El Paso" website. In addition, the DMD will create, publish, and disseminate a regular newsletter promoting downtown El Paso.

2.2.3 Supplemental Sanitation Services. The DMD shall regularly clean the sidewalks, alleys and storefronts located with the DMD area (as shown in Exhibit "A"). The term "regularly" shall mean, for purposes of this Agreement, five days per work week with the exception of recognized holidays and a reasonable period of time allocated as inoperative time due to maintenance problems or other matters beyond the control of the DMD.

(A) The DMD shall provide other supplemental sanitation services within the DMD area, as defined and allowed within Chapter 375 of the Texas Local Government Code, and as deemed fitting and appropriate by the DMD, within the scope of various programs and resources allowed therein. Examples of the type of supplemental sanitation services which could be selected by the DMD include, but are not limited to: the collection and removal of cardboard; removal of graffiti; painting of street furniture owned by the City including street light poles; cleaning of historical markers; power washing of sidewalks and alleys; assistance in the cleaning of specially impacted areas before and after specific special events; and the promotion of cleanliness and code compliance to the businesses and property owners within the DMD area.

(B) The DMD shall own, maintain, and operate the necessary equipment to perform the supplemental sanitation services pursuant to Scope of Services provided herein.

(C) The DMD shall supervise and train personnel in the operation and maintenance of the equipment. It is understood that the DMD will be using El Paso County adult probationers to work with the equipment and perform the labor required under this section of the Agreement. The DMD shall be solely responsible in regard to any matter or claim of whatsoever nature as to the supervision, training, activities, and responsibility by or for these persons. Without waiving this responsibility in any manner,

it is understood that the DMD may contract with responsible third parties in order to execute the supplemental sanitation services.

2.3 Collaborative Activities. Within twenty-four (24) months from the Effective Date of this Agreement, the DMD, in collaboration with the City's Planning and Economic Development Department, will identify at least two catalyst projects for the downtown El Paso area, which will be presented to the City Council at a regular public meeting. As part of this collaborative activity, the DMD and the City will jointly develop a capital plan for the identified catalyst projects and there will be an expectation of private sector participation in these projects.

2.4 Annual Report. On a yearly basis, being on or about every month of February following the execution date of this Agreement, the DMD will submit an annual report to City Council detailing its performance of activities under this Agreement.

2.5 Online special privilege permit application. The DMD will implement and maintain IT services, which allow for the submittal of an online special privilege permit application and procure additional IT services to host a database of these applications.

3.0 ALLOCATION OF EXPENSES AND CONTRIBUTION FOR SERVICES

3.1 In consideration of the DMD performing the services as set forth in Sections 2.2.1 and 2.2.2, the City agrees to provide certain management services of equal monetary value to the DMD, which will consist of one (1) full-time City employee who shall provide such services to the DMD as its Executive Director, with the City absorbing the compensation and benefit costs associated therewith. The parties agree that the actual costs of the DMD in providing the services set forth herein shall at a minimum be equal to the City's costs in providing the management services specified herein.

3.1.1 The DMD has selected Verónica R. Soto to serve as its Executive Director. As soon as reasonably possible after the execution of this Agreement, the City will enter into an employment agreement with the Executive Director, whereby the terms and conditions of employment for the Executive Director shall be more fully described, in accordance with and subject to the approval of the DMD. The City agrees that the Executive Director will devote his or her productive time, ability, attention, and energies to the business of the DMD during the term of this Agreement and as further specified in the employment agreement.

3.1.2 In the event of a change in the Executive Director during the term of this Agreement, the City will submit qualified management candidate to the DMD; the DMD reserves the right to approve any and all candidates the City proposes. In the event the DMD determines that the candidate for the position is unacceptable for any reason, the City will submit another candidate's qualifications for consideration as soon as reasonably possible. If the City is unable to provide a qualified candidate within ninety (90) days following receipt of the DMD's rejection of the proposed candidate(s) in

writing, the DMD may terminate this Agreement without advance notice. Upon termination, neither the City nor the DMD shall have any further obligations to each other under the Agreement.

3.1.3 The DMD agrees to provide to the City an annual accounting of the actual costs associated with providing the services as set forth in Sections 2.2.1 and 2.2.2. The term "actual costs" will include both direct and indirect costs, such as telephone, copying, mail and related expenditures. Ninety (90) days following the end of any given DMD fiscal year, the DMD shall provide to the City its annual accounting for the purpose of the City verifying that the minimum contribution value amounts identified in Section 3.1 have been satisfied.

~~3.2—In consideration of the DMD performing the supplemental sanitation services as set forth in Section 2.2.3, the City hereby agrees to pay an amount not to exceed Three Hundred Fifty Thousand and No/100th Dollars (\$350,000.00), representing no more than fifty percent (50%) of the cost of the performance of said services under the term of this Agreement ("City's proportionate share"), which will be paid out according to the following payment schedule:~~

~~(A)—Within thirty (30) days of the execution of this Agreement by both parties, the City shall pay the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00);~~

~~(B)—Thereafter on February 1, 2012, the City shall pay the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00);~~

~~(C)—Thereafter on February 1, 2013, the City shall pay the sum of Seventy Five Thousand and No/100 Dollars (\$75,000.00);~~

~~(D)—Thereafter on February 1, 2014, the City shall pay the sum of Fifty Thousand and No/100 Dollars (\$50,000.00); and~~

~~(E)—Thereafter on February 1, 2015, the City shall pay the sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00).~~

Amend Section 3.2 to read: In consideration of the DMD performing the supplemental sanitation services as set forth in Section 2.2.3, the City hereby agrees to pay an amount not to exceed Five Hundred Thousand and No/100th Dollars (\$500,000.00), representing no more than

fifty percent (50%) of the cost of the performance of said services under the term of this Agreement ("City's proportionate share"), which will be paid out according to the following payment schedule:

Amend Section 3.2 (C) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

Amend Section 3.2 (D) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

Amend Section 3.2 (E) to change the sum One Hundred Thousand and No/100 Dollars (\$100,000)

3.2.1 The DMD agrees to provide to the City a final accounting of the actual costs associated with providing the supplemental sanitation services as set forth in Section 2.2.3, to be delivered prior to the expiration or termination of this Agreement. The final accounting is for the purpose of City verification that it paid no more than the City's proportionate share as identified in Section 3.2.

3.2.2 If the City determines that the City has contributed more than the City's proportionate share as identified in Section 3.2 following: (i) inspection of the final accounting and any relevant records; and (ii) a 60-day notice and opportunity to cure period and failure to cure the same during the cure period, then the DMD shall reimburse to the City within sixty (60) days, an amount equal to the difference between the City's total contribution to date and fifty percent (50%) of DMD's actual costs for performance of the supplemental sanitation services as of the date of the expiration or termination of this Agreement.

3.3 The awarding and performance of any payment or contribution set forth herein and either party's service is dependent upon the availability of funding to the parties. In the event that funds relating to this Agreement do not become available, such as by City Council for the City of El Paso not appropriating the funds, the City shall have no obligation to pay or perform any services related here to the DMD for the City's fiscal year during which time such funding is not available or appropriated, or such as the DMD Board of Director not appropriating the funds, the DMD shall have no obligation to pay or perform any services related herein to the City for the DMD's fiscal year during which time such funding is not available or appropriated. Should the parties experience a funding unavailability, the parties may determine by mutual consent whether the Agreement will be terminated or amended.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall become effective on the date of approval of the last signatory to the Agreement (the "effective date") and shall terminate on October 5, 2015, unless sooner terminated as hereinafter provided.

4.2 Termination. Except as otherwise expressly provided, this Agreement may be terminated as provided herein.

4.2.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

4.2.2 Termination for Cause. It is further understood and agreed by the City and DMD that either party may terminate this Agreement in whole or in part, as provided below:

Such termination for cause may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of thirty (30) consecutive calendar days to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

4.2.3 Termination Without Cause. This Agreement may be terminated by either party for any reason, or for no reason whatsoever upon thirty (30) days prior written notice to the other party.

5.0 GOVERNMENTAL FUNCTION AND IMMUNITY

5.1 Governmental Function. The City and the DMD expressly agree that, in all things relating to this Agreement, the parties enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

5.2 Sovereign Immunity. The City and the DMD reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

6.0 RISK ALLOCATION – LIMITATION OF LIABILITY

6.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

6.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish, emotional distress and attorneys fees- as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

6.1.2 Intentional Risk Allocation. The City and the DMD each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

6.1.3 No Indemnification. The parties expressly agree that, except as provided herein, neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

6.1.4. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

7.0 INSURANCE

7.1 DMD shall purchase and maintain in effect throughout the term of this Agreement, a policy of general liability insurance from an insurance company authorized to do business in the State of Texas and as approved by the City, in minimum coverage amounts of not less than \$250,000 per person for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property, all subject to a policy year aggregate limit of not less than \$1,000,000.00. The DMD shall produce a copy of the insurance polic(ies), which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to the City prior to the effective date of this Agreement. Further, the insurance policy must contain endorsements which: (1) name the City as an additional insured and (2) include the City, as additional insured, under its cancellation clause, providing thirty (30) days prior written notice of cancellation or non-renewal to all insured, except for cancellation for non-payment of premium. Notwithstanding the foregoing, the DMD shall give written notice to the City within five (5) days of receipt of any notice of policy cancellation or non-renewal. The DMD shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

8.0 RECORDS

8.1 The DMD shall maintain appropriate records in accordance with generally accepted accounting principles and shall make such records available to the City for inspection and review during reasonable business hours at any time the City or its designee shall request access to the same. All records shall be kept by the DMD throughout the term of this Agreement and for a period in accordance with Chapter 375, Texas Local Government Code.

9.0 GENERAL PROVISIONS

9.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

9.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City.

9.3 Venue. The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

9.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will

make those payments from current revenues available to the paying party.

9.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

9.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

9.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

9.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

9.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

9.10 Notices. Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below:

CITY: City of El Paso
Attention: Office of the City Manager
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

Copy to: Director, Planning & Economic Development
City of El Paso
Two Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

DMD: El Paso Downtown Management District
201 E. Main, Suite 1603
El Paso, Texas 79901
Attention: President, Board of Directors

Changes may be made to the above addresses and addressees through timely written notice provided to the other party.

9.11 Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

9.12 Complete Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

9.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

9.14 Warranty of Capacity to Perform. The DMD and the City represent and warrant that each party has or will retain the person or persons with appropriate expertise and knowledge to fulfill their respective obligations under this Agreement.

9.15 Discrimination Prohibited. The DMD affirmatively obligates itself that it will not discriminate according to race, gender, religion or national origin in the performance of any obligation it has under this Agreement.

9.16 Survival. A party shall remain obligated to the other party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement in the City of El Paso as of the date first written above.

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn B. Dodson, Director
Planning & Economic Development Department

APPROVED AS TO CONTENT:

Ellen A. Smyth, P.E., Director
Environmental Services Department

**EL PASO DOWNTOWN
MANAGEMENT DISTRICT (“DMD”):**

By: _____
Robert S. Ayoub, President Board of Directors

ATTEST:

By: _____

Name (printed)
Secretary

Exhibit "A"

Downtown Management District boundary:



First Amended
Interlocal
Approved
November 15, 2011

(Redlined)

STATE OF TEXAS §
§ **AMENDMENT TO INTERLOCAL AGREEMENT**
COUNTY OF EL PASO §

This AMENDMENT TO INTERLOCAL AGREEMENT (“Amendment”) is entered into on the last date written below by and between the City of El Paso, Texas, a home-rule municipal corporation, (“the City”) and the El Paso Downtown Management District (“DMD”), a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375. The City and the DMD may be referred to in this Amendment individually as a “Party” and collectively as the “Parties.”

The Parties hereby agree to amend their current Interlocal Agreement dated February 1, 2011 (the “Interlocal”), subject to the following terms and conditions. The Parties agree that the additional terms and conditions will apply to the Interlocal unless further modified or amended by the Parties.

WITNESSETH:

WHEREAS, on or about February 1, 2011, the Parties entered into an Interlocal Agreement implementing activities to preserve, maintain, and enhance the economic health and vitality of the downtown El Paso area through public outreach development, downtown marketing services, and supplemental sanitation services, with the governmental purpose of stimulating commercial development and business activity in the downtown area; and

WHEREAS, the Department of Transportation of the City desires to supplement its responsibilities and requirements for processing and issuing of special privilege permits for applicants seeking to hold events within the Downtown Plan Area (as shown in Exhibit “1”) that utilize public right-of-way, and to include the DMD in the process and the coordination of same; and

WHEREAS, the Parties agree that such an arrangement is in keeping with the purposes of the Interlocal by having the DMD serve as the consolidated contact and permit-processing coordinator for applicants applying for a special privilege permit for events within the Downtown Plan Area (“permit applicants”); and

WHEREAS, the Parties agree that payment to the DMD for performing these functions will be borne by the permittee through the revenue generated from the permit and/or processing fees paid by the permit applicants, and/or from current revenues available to the City.

NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:

For and on behalf of the general public good and the mutual covenants and promises hereinafter set forth in this Agreement, the Parties agree as follows:

ARTICLE 1. BACKGROUND AND PURPOSE

Section 1.01 Authorization.

This Amendment is executed by the Parties in accordance with Section 9.6 of the Interlocal.

Section 1.02 Purpose.

The Parties execute this Amendment for the following purposes:

1.02.1 To supplement the City's Department of Transportation of the cumbersome and time-consuming special privilege permitting process for events within the Downtown Plan Area through the inclusion of and coordination for this process by the DMD.

1.02.2 To supplement and make more efficient and convenient the permitting process for downtown events, thereby encouraging more downtown events, by having the DMD serve as the consolidated contact for downtown event permit applicants.

Section 1.03 Effective date.

Unless otherwise specified, these additions to the Interlocal agreed to in this Amendment shall be effective as of _____, 2011.

ARTICLE 2. ADDITIONS TO THE "SCOPE OF SERVICES"

Section 2.01 Addition of Responsibilities.

The following is added as 2.2.4 under Section 2.0 (Scope of Services), Subsection 2.2 (DMD Responsibilities), of the Interlocal:

2.2.4 Special Privilege Permitting for Downtown Events. The City and the DMD agree that the DMD will be the lead entity responsible for coordinating special privilege permitting for events held within the Downtown Plan Area that utilize public right-of-way, and in this regard the DMD shall be responsible for performing the following:

- (A) Issuing and accepting special privilege permit applications for temporary use of City and TxDOT right-of-way for events within the Downtown Plan Area (the "Application"), on forms to be provided by the City;

- (B) Answering applicant questions about the Application and the permitting process;
- (C) Providing the applicant with a fee schedule, place for payment and payment deadline schedule, and an estimated amount of all costs for services provided by the DMD and the City for the issuance of the event permit;
- (D) Notifying the appropriate City departments of the filing of each Application, which may include notifying the Police, Fire, Transportation, Sun Metro, Health, Environmental Services, Parks, Convention and Visitors Bureau, and/or Museums and Cultural Affairs Departments as follows:
 - a. The City's Traffic Engineer (Ted Marquez) will be the initial contact for the DMD and he or his designee or other designee of the City Manager will advise the DMD regarding which City departments must be notified and the contact person(s) for each respective department.
- (E) Collecting Application and ancillary permit fees from the Applicant;
- (F) Guiding the applicant through the special privilege permitting requirements and procedures, and coordinating between City departments and the applicant to complete the following, as applicable:
 - a. Site Plan/Route Map/Traffic Control Plan. Obtaining from the applicant a Site Plan/Route Map/Traffic Control Plan showing the location and arrangement of all structures and vehicles to be brought onto the event site.
 - b. Notice of Proposed Closure. Providing the applicant with a Department of Transportation form on which the applicant must obtain the name and address of each owner or occupant of real property abutting the boundaries of the area in which the temporary event or street closure will be conducted and a signed statement from one individual representing or constituting the owner or occupant of each property stating whether they consent to or object to the proposed event.
 - c. Alcohol Permit. Informing the applicant of the steps necessary for selling and/or serving alcohol at the event, including the filing of an application for the temporary sale and service of alcoholic beverages with the Texas Alcoholic Beverage Commission (TABC), and the need for City Council approval.

- d. Traffic Control Permit. Informing the applicant of the steps necessary for obtaining a traffic control permit from the El Paso Department of Transportation.
- e. Notice of Proposed Closure. Providing applicant with a Notice of Proposed Closure Form, and informing applicant of information that must be obtained in order to properly complete the form.
- f. Health Permits. Informing the applicant of the steps necessary for obtaining Health Permit(s) from the City's Department of Public Health, if selling or giving away food and/or drink items at the event.
- g. Business Center Permits. Informing the applicant of the steps necessary for obtaining Business Center permits from the City's Engineering and Construction Business Center, which may include an Amplification Permit, a Parking Meter Permit, Vendor Permit(s) (Temporary Vendor, Vendor License, and/or Itinerant Vendor License), and/or a Charitable Solicitation Permit.
- h. Park Use Permit. Informing the applicant of the steps necessary for obtaining a Park Use Permit from the City's Parks and Recreation Department, if the applicant is requesting the exclusive use of a park facility in the Downtown Plan Area.
- i. Fire Department Permits. Informing the applicant of the steps necessary for obtaining Fire Department Permits from the El Paso Fire Department, which may include permits for Fire Occupancy, Fire Watch/Standby, Explosives, Temporary Structures, and/or Use of Compressed Gases.
- j. Medical Services. Directing the applicant to the El Paso Fire Department to obtain information on the medical services that will be necessary for the event.
- k. Security Measures. Directing the applicant to the El Paso Police Department to obtain information on the minimum security measures that must be implemented for the event, and to obtain an approved security plan.
- l. Environmental Services. Directing the applicant to the City's Environmental Services Department to obtain the environmental services requirements (post-event removal of garbage and recyclables).
- m. Street Cleaning. Informing the applicant of post-event street cleaning responsibilities and requirements. If the applicant desires to utilize post-event City street cleaning services, the DMD will coordinate with

the applicant and the Department of Transportation to submit the request.

- n. Insurance. Informing the applicant on the necessary insurance coverage and provisions that must be obtained, and insurance forms that must be submitted, for the event.
 - o. Public Health. Informing the applicant on the number and location of portable toilets that will be required for the event, based on Department of Public Health requirements and regulations.
 - p. Amplification. If amplification will be used at the event, informing the applicant of the El Paso City Code noise provisions and standards.
 - q. Assisting the applicant to coordinate with the Convention and Performing Arts Center for any events held in the Convention Center, Abraham Chavez Theatre, Plaza Theatre, Arts Festival Plaza, Convention Center Parking Garage, City Hall Surface Parking lots after business hours, Anthony Parking Lot, and/or Union Plaza Transit Terminal.
 - r. Assisting the applicant to coordinate with the City's Museums and Cultural Affairs Department for any events that will use the Museum of Art and/or the El Paso History Museum.
- (G) Forwarding the application and the related materials to the Ad Hoc Committee (AHC);
- a. The DMD agrees to participate and advise as necessary in any Ad Hoc Committee created by the City Council for review and approval of the processes covered by this Amendment.
 - b. The City agrees that a special privilege permit will be finally approved and issued only by the Traffic Engineer or his designee, with all rights of termination and/or rejection reserved by the City, as provided by the City Code.
- (H) Notifying the applicant in writing of the Traffic Engineer's approval or denial of the request. If the request is approved, the Traffic Engineer will issue the permit, which will be delivered to the applicant by the DMD. If the request is denied, the DMD shall inform the applicant in writing of the appeal process on a form to be provided by the City.
- (I) Annual Report. On a yearly basis, being on or about every month of November following the execution date of this Amendment to Interlocal

Agreement, the DMD will submit an annual report to the City Manager detailing its performance of activities under this Amendment.

2.2.5 Content Management for Wayfinding Kiosks to supplement the broad-based marketing program. The City and the DMD agree that the DMD will be the lead entity responsible for providing content on the existing city-owned kiosks located in the Union Plaza and San Jacinto Park within public-right-of-way as shown in Exhibit A (a map). The DMD will be responsible for the following:

(A) Provide materials that will be placed on the kiosks that is in compliance with the way-finding sign definition approved by the City Council. Material is to be placed on all the kiosks within sixty (60) calendar days of the execution of this Amendment and will be changed out at least once in a calendar year. All material will follow the sign definition standards, as provided for in the El Paso City Code.

(B) Low-level Maintenance for the kiosks content area is to be provided by the DMD to include replacement of the content, removing graffiti, painting the kiosks at least once every three (3) years. The DMD will inspect the kiosks at least once a quarter and report any deficiencies to City staff. Damaged or defaced signs will be replaced by the DMD.

(C) DMD staff will receive training and protocol guidelines from appropriate City staff on the proper way and necessary tools to place content on the kiosks and will follow the City's protocol in installing such content. Upon request, the DMD can provide City staff samples of the materials that will be placed on the kiosks four (4) weeks in advance of such placement.

(D) Secure funding for privately sponsored marketing materials. Such materials will be replaced by the DMD once a year. Applicants that request additional replacement of privately sponsored marketing materials may be responsible for the cost of materials and their replacement.

(E) Develop the standards for the material type, such as weight of paper and dimensions of total content area, for all materials to be placed on the kiosks, and develop a schedule for when content will be changed out if this is more frequently than once annually.

(F) Half (1/2) of the kiosks in the Downtown area will be made available for City sponsored events if a four-week notice is given to the DMD.

(G) Annual report. On a yearly basis, provide an annual report to the City Manager detailing its performance of activities under this agreement.

City Responsibilities

(A) Ensure the hardware of the kiosks is in working order within sixty (60) calendar days of execution of this amendment and provide training on the protocol guidelines to place the materials on the kiosks appropriately in that timeframe.

(B) High-level Maintenance for the kiosk infrastructure. If an existing kiosk is damaged beyond capabilities of the DMD—such as by a car accident—taking the appropriate measures to replace or remove the kiosks.

(C) Replacement of kiosks should the kiosks be damaged beyond repair as funding may be available.

(D) For content requested by the City to promote city-sponsored events only, the City shall provide the printed materials to be placed on the kiosks at least four (4) weeks in advance of the requested date of placement. The City can opt to reimburse the DMD for printing services and design and placement costs for the marketing materials.

2.2.6 Content Management for Big-Belly trash bins located in the Downtown area to supplement the broad-based marketing program. The City and the DMD agree that the DMD will be the lead entity responsible for providing content on the existing Big-Belly trash bins located throughout Downtown El Paso.

DMD Responsibilities

1. DMD will pay for half (1/2) the cost of the appropriate hardware for a minimum of one-fourth (1/4) of the Big-Bellies that currently exist in the Downtown area within one year after this Amendment is approved by the El Paso City Council. Every year thereafter, the DMD will pay half (1/2) the cost of the hardware for a minimum of a quarter (1/4) of the inventory in existence in 2012 so that in four (4) years all of the Big-Belly trash bins located throughout Downtown El Paso have appropriate hardware for marketing promotion.

2. At least one-fourth (1/4) of the available marketing space will be used for anti-littering campaign materials for at least six (6) months per annum. All material will follow the sign definition standards, as provided for in the El Paso City Code.

City Responsibilities

1. City will pay half (1/2) the cost of hardware for the appropriate hardware to be installed on one-fourth (1/4) of the Big-Bellies downtown within the first year of signing this agreement. Every year thereafter, the City will pay half (1/2) the cost of the hardware for a minimum of a quarter (1/4) of the inventory in existence in 2012 so that in four (4) years all of the Big-Belly trash bins located throughout Downtown El Paso have appropriate hardware for marketing promotion. The City will install the hardware on the Big-Belly trash bins.

2.2.7 Direct marketing services for downtown events. Upon request from the City, the DMD may provide direct marketing-related services to promote downtown

events sponsored and administered by the City as part of the Downtown marketing plan, in accordance with all applicable laws. The DMD will invoice the City for direct marketing services under 2.2.7.

ARTICLE 3. ADDITION TO THE “ALLOCATION OF EXPENSES AND CONTRIBUTION FOR SERVICES”

Section 3.01 *Addition to Consideration.*

The following is added as section 3.4 to Section 3.0 (Allocation of Expenses and Contribution for Services) of the Interlocal:

3.4 In consideration of the DMD supplementing and coordinating the downtown special privilege permitting services as set forth in Section 2.2.4 herein:

- (A) the DMD will collect or cause to be collected from the applicant, in the manner directed by the City Manager or designee, the Application fee, the special privilege permit fees, street closure fees, and any service fees (such as traffic control, fire and medical plan review fees, parking meter rental fee, street/right-of-way cleaning costs, fire guards, and/or police security services), that are due and owing to the City pursuant to applicable City ordinances and City Charter; and
- (B) ~~the City agrees to pay the DMD an annual flat fee of \$5,000.00, which covers the DMD’s fixed costs and the processing of up to thirteen (13) applications per year. Applications processed by the DMD during a contract year in excess of thirteen (13) will be paid at a rate of \$385.00 per excess application. The City will pay the DMD the initial annual fee within thirty (30) days of signing this Amendment, and will pay for each subsequent year within thirty (30) days after the anniversary of the date on which this Amendment is executed. Should the applications processed by the DMD during a contract year exceed thirteen (13), the City will pay the DMD the additional amount owed for the processing of the excess application(s) for the previous year at the time that the annual payment for the preceding year is paid. The DMD will document any additional amount owed by the City on its annual report filed pursuant to section 2.2.4(I).~~

Amend Section 3.4 to read: (B) the City agrees to pay the DMD an annual flat fee of Six Thousand Five Hundred and No/100 Dollars (\$6,500.00) which covers the DMD’s fixed costs and the processing of up to thirteen (13) applications per year, Applications processed by the DMD during a contract year in excess of thirteen (13) will be paid at a rate of Five Hundred Eighty and No/100 Dollars (\$580.00) per excess application. The City will pay the DMD the initial annual fee within thirty (30) days of signing this Amendment, and will pay for each subsequent year

within thirty (30) days after the anniversary of the date on which this amendment is executed. Should the applications processed by the DMD during a contract year exceed thirteen (13), the City will pay the DMD the additional amount owed for the processing of the excess application(s) for the previous year at the time that the annual payment for the preceding year is paid. The DMD will document any additional amount owed by the City on its annual report filed pursuant to section 2.2.4(I).

ARTICLE 4. ADDITION TO “TERM AND TERMINATION”

Section 4.01 *Addition to Termination.*

The following is added as section 4.2.3.1 to Section 4.2.3 (Termination Without Cause) of the Interlocal:

4.2.3.1 The Agreement set forth in this Amendment to Interlocal may be terminated by either party for any reason, or for no reason whatsoever, upon sixty (60) days written notice prior to the anniversary date of execution of this Amendment, and such termination of this Amendment shall not affect or cause the termination of the Interlocal Agreement dated February 1, 2011.

ARTICLE 5. REPRESENTATIONS AND AGREEMENT OF THE PARTIES

Section 5.01 *Continuing effect of the Interlocal Agreement.*

The Parties contract and agree that the terms of the Interlocal Agreement dated February 1, 2011 shall remain in full force and effect.

Section 5.02 *Incorporation of the terms of the Amendment.*

By signing this Amendment, the Parties expressly understand and agree that this Amendment is hereby made a part of the Interlocal Agreement dated February 1, 2011 as though it were set out verbatim in the Interlocal.

IN WITNESS HEREOF, the City and the DMD have each caused this Amendment to be signed and delivered by its duly authorized representative.

(Signatures follow on the next page)

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Elizabeth M. Ruhmann
Assistant City Attorney

Daryl W. Cole, Director
El Paso Department of Transportation

**EL PASO DOWNTOWN
MANAGEMENT DISTRICT (“DMD”):**

By: _____
Robert S. Ayoub, President
Board of Directors

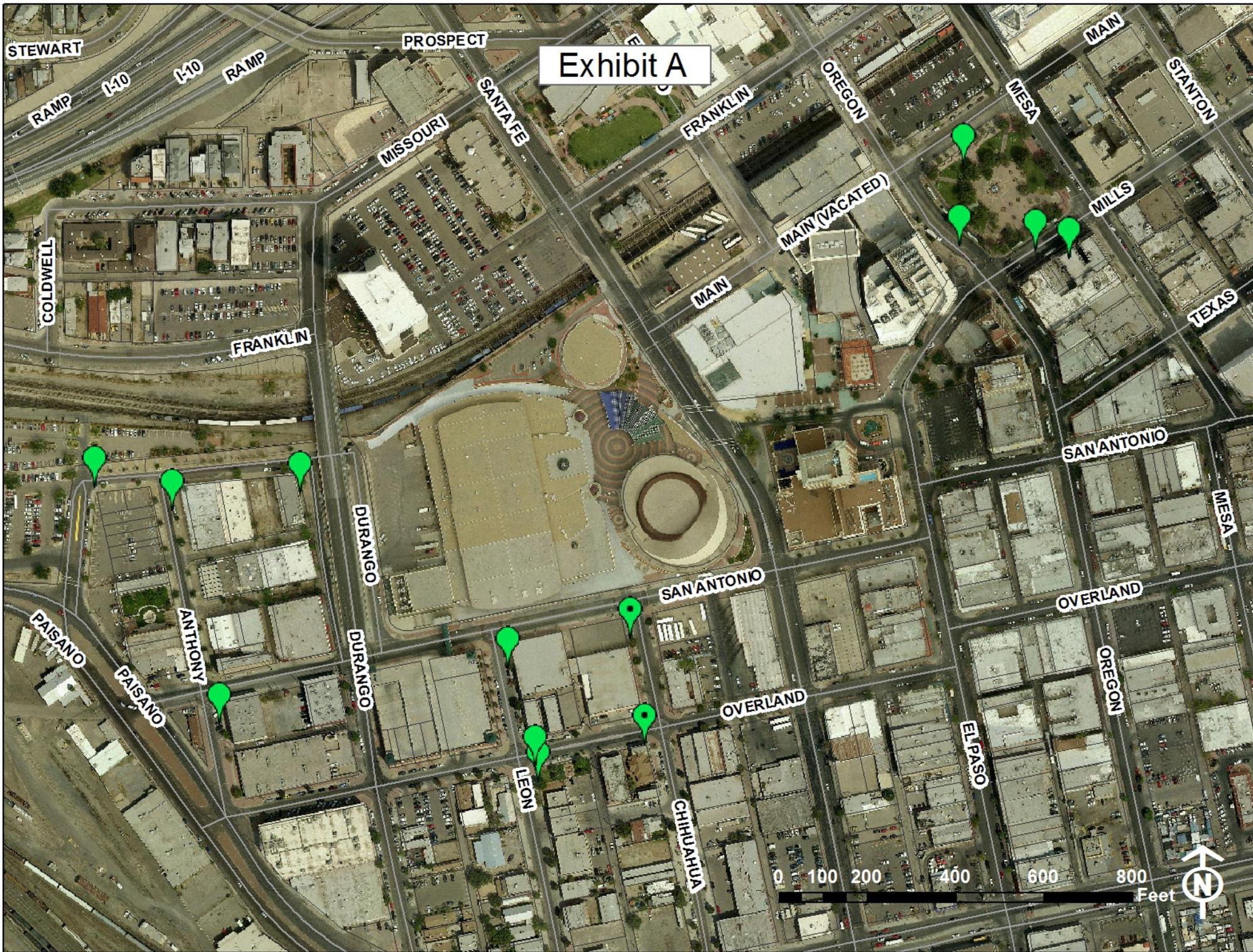
ATTEST:

By: _____
Michael D. McQueen, Secretary

Exhibit "1"

Downtown Plan Area boundary:

Exhibit A





DMD Second Amended Inter-local Agreement



Existing DMD Supplemental Services

- The DMD provides the following supplemental services:
 - Sanitation Services
 - Façade Administration
 - Marketing for city sponsored and downtown events.
 - Special Privilege Permit Applications for projects in Downtown.



Added Services-Second Amended Inter-local

- DMD will Manage the City's Wayfinding program in the Downtown area.
 - DMD will be the lead entity responsible for providing content on city-owned kiosks in the Union Plaza and San Jacinto Park.
 - Responsible for low-level maintenance- includes graffiti removal on a monthly basis and the painting of kiosks every three years.
 - DMD will also be responsible for placing marketing materials for City sponsored events and to promote other downtown events.
 - Damaged or defaced signs will be replaced by the DMD.



Added Services-Second Amended Inter-local cont.

- Content Management on automated trash bins in the Downtown area.
 - Trash bins will be utilized to supplement marketing efforts in the downtown area.
 - DMD will be responsible for installing the necessary hardware to place marketing materials.
 - The City and DMD will provide $\frac{1}{2}$ of the cost of hardware on at least $\frac{1}{4}$ of the trash bins that exist in the downtown area for the next 4 years.
 - $\frac{1}{4}$ of the marketing space will be devoted for anti-littering campaigns.
- The DMD will implement and maintain IT services, which allow for the submittal of special privilege applications online.



Amendment to the “Allocation of expenses and Contribution for services”

- In consideration for the supplemental services that the DMD will provide:
 - The City will increase its contribution for services from the current \$350,000 to \$500,000. This will be paid over the next three years.
- IT Services for Special Privilege Online application submittal
 - The City will increase the annual flat fee for processing 13 applications from \$5,000 to \$6,500.
 - Applications in excess of the thirteen covered under the annual flat fee will increase from \$385 to \$580.

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



Questions