

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

**DEPARTMENT:** Environmental Services

**AGENDA DATE:** March 23, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** Ellen A. Smyth, P.E., Director (915) 621-6719

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

**Approve an Interlocal Agreement with the Downtown Management District**

**BACKGROUND / DISCUSSION:**

The proposed agreement with the Downtown Management District is for three years beginning 2010 through 2012 for an annual amount of \$60,000. The DMD will clean sidewalks, alleys and storefronts and graffiti removal within the DMD geographical area in downtown El Paso, Texas.

**PRIOR COUNCIL ACTION:**

1998 was the first three-year interlocal agreement; agreement was renewed in 2001, 2004, and 2008. The 2008 agreement was terminated on August 31, 2009, and a new interlocal agreement was entered into for the period from Sept. 1, 2009 through Dec. 31, 2009.

**AMOUNT AND SOURCE OF FUNDING:**

Department: 34010281  
Account: 50200  
Fund: 40403  
Class: 3400

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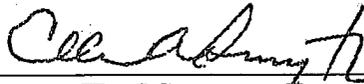
**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*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*

**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 agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "DMD") for the DMD to clean sidewalks, alleys and storefronts and graffiti removal, among other tasks for an annual \$60,000.00 payment from the City for services through March 31, 2013.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**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:**

\_\_\_\_\_  
Patricia D. Aduino, Deputy City Manager  
Development & Infrastructure Services

STATE OF TEXAS

INTERLOCAL AGREEMENT

COUNTY OF EL PASO

THIS AGREEMENT is by and between the City of El Paso, Texas, a Texas Home Rule City, hereinafter "City" and the El Paso Downtown Management District, a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375, hereinafter "DMD", entered into on this 1st day of April, 2010.

WHEREAS, Section 375.092 (g) of the Texas Local Government Code expressly authorizes Municipal Management Districts to enter into agreements with other public entities; and,

WHEREAS, in accordance with Section 375.001(c), the DMD desires to supplement certain City services for increased health, safety and welfare of citizens to promote downtown El Paso; and,

WHEREAS, the Board of Directors of the DMD and the El Paso City Council finds that a program of regular sidewalk, alley and storefront cleaning and graffiti removal, along with other agreed upon activities, would be in the public interest and serve a public benefit to the citizens of El Paso by making downtown El Paso attractive and serviceable to all.

**NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:**

For and on behalf of the general public good and the covenants and promises hereinafter set forth, the City and the DMD agree to the following:

**I. Responsibilities of the DMD**

A. The DMD shall regularly clean the sidewalks, alleys and storefronts located within the DMD geographical area in downtown El Paso, Texas. The term "regularly" shall mean, for purposes of this Agreement, five days per work week with the exceptions 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.

B. The DMD shall continue to provide other supplemental services within the DMD geographical area in downtown El Paso, Texas, as defined and allowed within Chapter 375 of the Local Government Code, and as deemed fitting and appropriate by the Board, within the scope of various programs and resources allowed therein. Examples of the type of supplemental

services which could be selected by the Board 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; the installing and removing of street poles and banners owned by the City and street poles and banners owned by persons' or entities other than the City to the extent such action is authorized by the third party; cleaning of historical markers; power washing of sidewalks and alleys; assistance in the cleaning of specially impacted areas before and after specific events; and the promotion of cleanliness and code compliance to the businesses and property owners within the DMD.

C. The DMD shall own, maintain and operate the necessary equipment to perform the services pursuant to the Scope of Work herein.

D. The DMD shall supervise and train personnel in the operation and maintenance of the equipment. In this regard, it is understood that the DMD will be using El Paso County adult probationers to work with the equipment and perform the labor under this Agreement. The DMD shall be solely responsible in regard to any matter or claim of whatsoever nature as to the supervision, training and responsibility 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 fulfill this Agreement.

E. At all times relevant to this Agreement and project, the DMD shall be considered an independent contractor, and shall never be considered an employee, agent or servant of the City.

F. With the prior approval of the City's Deputy City Manager for Development and Infrastructure, as to the type, design and placement, it is hereby agreed that the DMD has the authority to purchase and install certain fixtures; for example, light fixtures, benches, trash

containers, etc., for use within the District. The District shall pay for these fixtures from its own funds. The City shall not pay for any such fixtures.

G. In further consideration of this Agreement, the 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 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. Said insurance policy or policies shall name the City as an additional insured. The DMD shall deliver to the City, prior to beginning any work, a true and accurate copy of the certificate of insurance for the above required insurance policy. Said certificate shall state on its face, at a minimum, the policy limits, that the City is an additional insured under the policy and that no change or cancellation of the policy shall be effective unless and until thirty (30) days prior written notice has been provided to the City.

## II. CONSIDERATION

A. In consideration of the DMD providing the supplemental services as set forth herein, the City shall pay to the DMD within thirty (30) days of the execution of this Agreement by both parties the sum of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00). Thereafter, on April 1, 2011, the City shall pay to DMD, SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00), and a payment on April 1, 2012 of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00).

B. The awarding and performance of any payment and the DMD'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 not appropriating the funds, the

Deleted: "

City shall have no obligation to pay the DMD for the City's fiscal year during which time such funding is not available or appropriated. Should the parties experience a funding unavailability, the parties may mutually determine if the Agreement will be terminated or whether an amendment of the parties' obligations is possible. Termination or cancellation shall be as provided herein, and there shall be no penalty charges incurred by the terminating party for such termination or cancellation.

### **III. TERM AND TERMINATION**

The term of this Agreement shall be for three (3) years from the date of passage by City Council, and acceptance by the DMD, until March 31, 2013, unless sooner terminated by either party for any reason upon sixty (60) days prior written notice to the other party.

### **IV. GENERAL PROVISIONS**

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

B. This Agreement shall be interpreted and enforced in accordance with the law of the State of Texas. Venue for any matter related to this Agreement shall be in the courts of El Paso County, Texas.

C. In the performance of this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

D. This Agreement and the obligations hereunder shall not be assigned, transferred or encumbered in any manner without the written consent of the City and the DMD.

E. Should any provision of this Agreement be found, by a court of competent jurisdiction to be invalid or illegal, such finding shall not affect any other remaining term or provision of the Agreement.

F. Notices to affect this Agreement shall be considered sufficient if sent by mail, certified, return receipt requested to the following addresses: (Note: notice addresses may be changed upon two days prior written notice to the party to be bound)

CITY:

City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, TX 79901

COPY TO:

Ellen A. Smyth, P.E., Director  
Environmental Services Department  
7968 San Paulo  
El Paso, TX 79907

DMD:

El Paso Downtown Management District  
Attn: Executive Director  
201 E. Main, Suite 1710  
El Paso, TX 79901

G. This Agreement represents the entire agreement between the parties and supersedes any other verbal or written understandings or agreements of the parties as to the matters the subject hereof.

H. DMD and the City represent and warrant that they have or will retain the person or persons with appropriate expertise and knowledge to fulfill their respective obligations under this Agreement.

I. 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.

J. This Agreement shall not be modified, amended or changed except upon a written instrument signed by the parties.

TO WITNESS WHICH THE FOLLOWING SIGNATURES:

**CITY OF EL PASO**

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

ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

\_\_\_\_\_  
Patricia D. Aduato, Deputy City Manager  
Development & Infrastructure Services

**AGREED AND ACCEPTED:**

DOWNTOWN MANAGEMENT DISTRICT

ATTEST:

\_\_\_\_\_  
William B. Hooten  
President

\_\_\_\_\_  
Marc Bernat  
Secretary

DATE:

**STATE OF TEXAS**

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COPY TO:

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Environmental Services Department  
7968 San Paulo  
El Paso, TX 79907

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**CITY OF EL PASO**

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John F. Cook  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

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Josette Flores  
Assistant City Attorney

\_\_\_\_\_  
Patricia D. Aduato, Deputy City Manager  
Development & Infrastructure Services

**AGREED AND ACCEPTED:**

DOWNTOWN MANAGEMENT DISTRICT

ATTEST:

\_\_\_\_\_  
~~Richard Dayoub~~ ~~William B. Hooten~~  
President

\_\_\_\_\_  
Name: \_\_\_\_\_ ~~Marc Bernat~~  
Secretary

DATE:

\_\_\_\_\_