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

DEPARTMENT: **Department of the City Manager**

AGENDA DATE: **April 3, 2007**

CONTACT PERSON/PHONE: **Patricia D. Adauto, Deputy City Manager**
Development & Infrastructure Services
(915) 541-4853

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DISTRICT(S) AFFECTED: All Districts

SUBJECT:

Resolution authorizing the City Manager to sign an Agreement between the City of El Paso and Marcus Jahns, providing for the development of an Implementation Strategy that supports recommendations of the Downtown 2015 Plan and the Recommended Project and Financing Plan of the Tax Increment Reinvestment Zone for the area, in an amount not to exceed One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) to offset the costs of the development of the Implementation Strategy, and that the City Manager be authorized to sign any related documents which might be necessary to accomplish such purpose. Funding Source: 99010273-504405.

BACKGROUND / DISCUSSION:

As part of the adoption of the Downtown 2015 Plan and the creation of the TIRZ in the fall of 2006, staff had recommended and the El Paso City Council authorized the development of an implementation strategy. The consulting services contract authorizes this work (See Scope of Services in Attachment A), and specifically provides for the following:

- Cost of services is no more than $175,000.00; except that the City Manager is authorized to allow up to an additional $25,000.00 if the City requests additional services;
- Term is from the date of contract execution to August 31, 2007, and may be extended upon agreement of the City Manager and the Consultant;
- Monthly invoicing shall be required based upon the percentage of task completed;
- Fee includes travel and other ordinary expenses in providing the services; and
- Deliverables and timelines are as stipulated in Attachment A.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

The El Paso City Council approved the Downtown 2015 Plan on October 31, 2006, and subsequently approved the designation of a Tax Increment Reinvestment Zone for the redevelopment areas contained in the Plan on December 19, 2006.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

OMB has budgeted $250,000.00 for this effort; Funding Source 990101273 – Account #504405.

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

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

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

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

WHEREAS, *The Plan for El Paso* addresses key components to be achieved in the revitalization of the downtown area that include a focus on international connectivity, redevelopment opportunities, housing strategies, infill development, and mixed-use choices; and,

WHEREAS, the study area plan referred to as the Downtown 2015 Plan has been developed with these components as catalysts for revitalization and redevelopment of the area; and,

WHEREAS, the El Paso City Council formally approved the downtown study area plan on October 31, 2006, and subsequently approved the creation of a Tax Increment Reinvestment Zone on areas within the study area plan on December 19, 2006; and,

WHEREAS, the El Paso City Council has directed that the City Manager engage a consultant to prepare an Implementation Strategy for the Downtown 2015 Plan that will assist a TIRZ Board with the development and adoption of a Final Project & Financing Plan for the area; and,

WHEREAS, an Agreement has been negotiated with Marcus Jahns to provide Consulting Services under which the City will have an overall implementation pathway for the downtown revitalization efforts addressed in the Downtown 2015 Plan; and,

WHEREAS, the recommended Consultant assisted the City with the development of a Preliminary Project & Financing Plan during the TIRZ development for the area, and is knowledgeable about the issues and considerations of the Downtown 2015 Plan;

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

THAT the City Manager be authorized to sign the Agreement between the City and Marcus Jahns, providing for the development of an Implementation Strategy that supports the recommendations of the Downtown 2015 Plan and the Recommended Project & Financing Plan of the TIRZ for the area, in an amount not to exceed One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) to offset the costs of the development of the Implementation Strategy, and that the City Manager be authorized to sign any related documents which might be necessary to accomplish such purpose.

(SIGNATURES ON FOLLOWING PAGE)

ADOPTED this the _____ day of _____, 2007.

THE CITY OF EL PASO

_____
John Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

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APPROVED AS TO FORM:

_____
John R. Batoon
Assistant City Attorney

STATE OF TEXAS §
§
COUNTY OF EL PASO §

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CONSULTING SERVICES AGREEMENT

This Consulting Agreement for **MARCUS JAHNS** (this "Agreement") is executed effective for all purposes as of this 3rd day of April, 2007, by and between the City of El Paso, a home rule municipal corporation, (the "City") and Marcus Jahns, individual (the "Consultant").

RECITALS:

WHEREAS, on June 21, 2005, City Council adopted Ordinance No. 16072 allowing the City Manager or his or her designee to enter into and sign certain contracts on behalf of the City that are personal services, professional and temporary services, independent services contracts, and other service contracts authorized under the Charter, either part-time or full time; and,

WHEREAS, this contract falls within the parameters of Ordinance No. 16072; and,

WHEREAS, the City Manager, on behalf of the City, desires to engage the Consultant to prepare an implementation strategy for the Downtown 2015 Plan and to specifically perform the duties set forth in Attachment A (the "***Consulting Services***") which is incorporated herein by reference; and,

WHEREAS, the Consultant desires and possesses the skills to perform the Consulting Services.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. SCOPE OF SERVICES. The Consultant hereby agrees to perform the Consulting Services and to adhere to all relevant rules and policies of the City.

2. ALTERNATE/ADDITIONAL SERVICES. Should alternate or additional services outside the scope set forth in Attachment A be requested of the Consultant by the City, said alternate or additional services shall automatically become a part of this Agreement upon acceptance and funding by the City and acceptance by the Consultant. It is understood and agreed that the City will not be liable for any cost overrun on this Agreement without its prior written approval. Said approval must be obtained prior to the Consultant commencing alternate or additional services that will result in the cost overrun. The El Paso City Council authorizes the City Manager to exercise the authority to request additional services pursuant to this Agreement up to an amount not to exceed Twenty-Five Thousand and 00/100 Dollars ($25,000.00).

3. TIME OF PERFORMANCE. The Consultant shall commence performance of the Consulting Services immediately upon execution of this Agreement and extending through the

completion of all of the tasks and deliverables required in Attachment A, but in no event shall this Agreement extend beyond August 31, 2007 unless agreed to, in writing, by both the City Manager and the Consultant (the "***Agreement Period***"). The El Paso City Council authorizes the City Manager to exercise the authority to extend the Agreement under this paragraph. For purposes of this Agreement, the Deputy City Manager, Development & Infrastructure Services – Department of the City Manager shall serve as the City Manager's direct Point-of-Contact for all activities related to this Agreement. In addition, for purposes of executing the Consulting Services as provided in this Agreement, the City shall designate three officials to coordinate and work with the Consultant on the technical aspects of the engagement as follows: Deputy City Manager, Development & Infrastructure Services – Department of the City Manager; Director – Economic Development Department; and Deputy Director for Planning – Development Services Department.

4. PERFORMANCE STANDARDS. The Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, codes and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals in any matter affecting its performance under this Agreement.

5. WORK PRODUCT. All information and other data given to, prepared or assembled by the Consultant under this Agreement, shall become the sole property of the City and shall be delivered to the City without restriction on future use.

6. COMPENSATION AND METHOD OF PAYMENT. The City agrees to pay Consultant compensation of a fixed fee of One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) for the tasks delineated, and shall be invoiced monthly by the Consultant to the City based upon the services provided in proportion to the work completed. Additional tasks directed by the City Manager not anticipated in the Scope of Work delineated herein shall be compensated on an hourly basis at the rate of Two Hundred Fifty and 00/100 Dollars ($250.00) per hour, unless an alternative compensation method is agreed upon in writing by the City Manager and the Consultant. Ordinary expenses including travel shall be included in the fixed fee. If extra-ordinary expenses arise due to a request of additional services by the City Manager, those expenses shall be reimbursed as incurred by the Consultant. Consultant shall provide one final report in both digital and hard copy. Payment by the City to the Consultant shall be made within fifteen (15) business days of receipt of Consultant's monthly invoice.

7. INDEPENDENT CONSULTANT RELATIONSHIP. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The City shall not be subject to any obligations or liabilities the Consultant incurred in his performance under this Agreement.

8. FRINGE BENEFITS. The City shall not provide any fringe benefits to the Consultant.

9. LOCATION OF PERFORMANCE. The Consultant shall perform the Consulting Services in the City and County of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.

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10. INDEMNIFICATION OF THE CITY. BY ACCEPTANCE OF THIS AGREEMENT, THE CONSULTANT AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH) ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF THE CONSULTANT OR HIS AGENTS, SUBCONSULTANTS, CONSULTANTS AND EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT.

11. LAW GOVERNING AGREEMENT AND VENUE. For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

12. MEDIATION. The City and the Consultant agree that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Agreement, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually-agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under this Agreement by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof.

13. CITY CONFIDENTIAL INFORMATION. The Consultant will keep all confidential information in confidence except as may otherwise be required by law or court order and will not disclose any item of confidential information to any person other than its employees, agents or Consultants who need to know the same in the performance of their duties. The Consultant will protect and maintain the confidentiality of all confidential information with the same degree of care as it employs to protect its own confidential information.

14. ASSIGNMENT. This Agreement shall be deemed personal to the Consultant, and the Consultant shall not assign, sell, transfer, or otherwise dispose of this Agreement or portion thereof, or its rights, title or interest therein, without the written consent of the City.

15. TERMINATION. This Agreement shall terminate at the end of the Agreement Period or as otherwise agreed upon by the parties hereto in writing. Either party may terminate this Agreement without cause after ten (10) days written notice to the other party of the intention to terminate, or at any time by mutual agreement of the parties. Should the City have cause to terminate this Agreement, this Agreement may be terminated immediately upon notification to the Consultant of the cause for termination. Upon any termination, the City shall promptly pay the Consultant for fees and reimbursable expenses incurred by the Consultant through the Termination Date. As a member of the unclassified services for the City, the Consultant, pursuant to section 6.2-3 of the Civil Service Charter, may be terminated from service by the City Manager. The Consultant acknowledges that he has no right of appeal with respect to such termination.

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16. NOTICE. Any notices required under this Agreement shall be sufficient if sent by certified mail, return receipt requested, postage prepaid, to the City or the Consultant, as the case may be, at the following addresses:

THE CITY:

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services
City of El Paso
Two Civic Center Plaza
El Paso, Texas 79901

THE CONSULTANT:

Marcus Jahns

17. COMPLETE AGREEMENT. This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the Consulting Services.

IN WITNESS WHEREOF, the parties hereto executed this Agreement at El Paso, Texas, effective as of the first date appearing heretofore.

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CITY OF EL PASO TEXAS:

Joyce A. Wilson
City Manager

CONSULTANT:

Marcus Jahns

APPROVED AS TO FORM:

John R. Batoon
Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 22 day of March 2007, by Marcus Jahns, as Consultant.

IRENE RANGEL
Notary Public, State of Texas
My Commission Expires
AUGUST 09, 2009

Irene Rangel
Notary Public, State of
Texas

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

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

_____
Notary Public, State of Texas

_____

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Attachment A

SCOPE OF WORK

The following outlines the Proposed Scope of Work for Phase II of the Implementation of the Downtown 2015 Plan based on an overall deliverable of an "Implementation Pathway":

Task 1 Refine project descriptions of the 5-redevelopment districts including descriptions of private sector catalyst projects and public infrastructure improvements based upon TIRZ revenue and public sector investment cost estimates identified in Phase I. This refinement will include a market analysis to determine the appropriate types and scale of uses for downtown, as well as the steps needed to take advantage of catalyst projects through the supplemental tasks below.

As a part of Task 1, the Consultant will identify downtown projects that have potential for early implementation including projects eligible for funding by the United States Economic Development Administration (EDA).

Task 2 Review and comment on incentive packages recommended by City Staff to encourage private investment in the Downtown Redevelopment area.

Task 3 Identify internal linkages (conceptual-level) between the 5-redevelopment districts based on the initial Phase I Plan from the following perspectives:

- Transportation (vehicular, public transit and international)
- Pedestrian
- Design standards (functional and branding)
- Way finding
- Existing commercial and street-level activities and locations

From the external perspective, provide strategic recommendations on regional linkages such as transit to tie Downtown with the UTEP/Medical District Area as well as the "Medical School" Area in order to expand downtown markets in terms of regional connections.

Task 4 Refine cost estimates for private and public investments and prioritize public improvements within available TIRZ funding.

Task 5 Develop alternative funding scenarios to supplement public improvements to encourage private investments (parking/arena, etc) based on Market Analysis, prioritization of catalyst projects and proposed phasing.

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Task 6 Develop a comprehensive financing plan that identifies public and private investments including:

- TIRZ financing
- Alternative public financing scenarios (parking/arena, etc)
- Private investments
- Maintenance and operation (public and private).

Task 7 Develop a project-phasing plan based upon the prior tasks including prioritization of catalyst projects and potential for public/private investment.

Task 8 Prepare an economic impact analysis based on prioritization of catalyst projects and proposed phasing.

The following tasks are proposed as Additional Tasks that will not be included initially in the Phase II Budget but may be added if the need for the development of RFPs and support to process those RFPs becomes apparent. Additional funding shall be provided for these additional tasks if they are requested.

Task 9 Prepare Request for Proposals for developers based upon a comprehensive financing plan and project phasing.

Task 10 Assist the City with evaluating proposals and selecting a master developer(s).

Task 11 Assist the City with negotiating a Development Agreement(s) with a master developer(s).

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DELIVERABLES AND TIMELINES

Task 1 and 2 shall be completed by the Consultant within thirty (30) days of execution of the contract between the City and the Consultant. The Consultant shall submit an interim report within a thirty (30) day period that (1) identifies projects eligible for EDA funding and (2) provides comments and recommendations on the incentive packages for downtown redevelopment proposed by City Staff.

Tasks 3 through 8 shall be completed on or before June 30, 2007. The Consultant shall provide three (3) copies of a final report in both digital and hard copy.

If the City elects to have Consultant assistance on Task 9 through 11 as identified in the Scope of Work, the deliverables and timelines for the Additional Tasks shall be mutually agreed upon in writing by the City Manager and the Consultant.

The Consultant shall attend and participate in at least one (1) community meeting and two (2) TIRZ Board Meetings to obtain citizen input regarding their final report on Phase II of the Downtown 2015 Plan Implementation Strategy. The City shall be responsible for handling all logistics relative to the meetings, including notification and arrangements for the meetings. Consultant shall keep the City apprised of the status of work throughout the term of this Agreement.

The City agrees to provide or assist the Consultant in obtaining all information necessary for completion of the tasks in a timely manner. The City agrees to make its employees and other consultant(s) available to meet with the Consultant in a timely and reasonable manner to facilitate completion of the scope of work.

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