

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

DEPARTMENT: Economic Development
AGENDA DATE: September 25, 2007
CONTACT PERSON/PHONE: Kathy Dodson, PhD, Director 541-4670
DISTRICT(S) AFFECTED: 8

SUBJECT:

Discussion and action on a Resolution that the Mayor be authorized to sign the Interlocal Agreement with the El Paso Downtown Management District ("DMD") under which the City's Economic Development Department shall administer the City's Downtown Facade Improvement Program with technical assistance and a financial contribution from DMD.

BACKGROUND/DISCUSSION:

In partnership with the Downtown Management District, (DMD), the City of El Paso would like to implement a grant program for downtown businesses that provides up to \$10,000 per façade, in matching funds. This program aims to improve the aesthetic appearance of properties in the downtown area. To be eligible, buildings must be located in the downtown Historic District, in the downtown Tax Increment Reinvestment Zone or in the Downtown Management District. The grants are available to building owners or tenants who have the consent of the building owner. Property taxes for the building must be current and there must be no code enforcement actions pending against the property to be eligible for the grant. Façade improvement must adhere to the design guidelines in the 2015 Plan or Historic design guidelines, and must be approved by a review committee. The City of El Paso and the Downtown Management District have each designated \$50,000 towards the program. Each grant will fund up to half of the façade improvement cost or a maximum of \$10,000.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?
Yes, previous contract for a facade program with DMD was in place in 2003.

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?
Funded jointly by the City and the DMD with \$50,000 each. City funds have been budgeted in the Economic Development Department 720150035/15462/PED00002

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:** _____

RESOLUTION

CITY CLERK DEPT.

07 SEP -4 AM 9:53

WHEREAS, on July 10, 2006, the City Council of the City of El Paso ("the Council") passed and approved a resolution, concerning the preparation and implementation of a Downtown Redevelopment Plan, in which the Council expressed its determination that a revitalization strategy is necessary to address the critical needs of the downtown area in order to foster and support economic growth and opportunity and to ensure new investments will market the area as a thriving place to work, live, and visit; and

WHEREAS, on October 31, 2006, the Council passed and approved Ordinance No. 016487, incorporating the Downtown 2015 Plan ("the Plan") into the City's comprehensive plan entitled *The Plan for El Paso* and directing the City Manager to prepare an Implementation Strategy for execution of the Plan, with particular focus to phasing, implementation tools, and financing mechanisms to be utilized to carry out the intent of the Plan; and

WHEREAS, the Plan envisioned that the Implementation Strategy would include a package of incentives and policies that will encourage and energize continued and more expansive investment and improvement in the whole of downtown; and

WHEREAS, the City desires to implement a Downtown Facade Improvement Program ("the Program"), as one of several incentive programs that are part of the Implementation Strategy for the Plan; and

WHEREAS, the purpose of the Program is to provide funding to existing businesses and/or property owners to cure deteriorated conditions and encourage improvement and rehabilitation of their buildings in the Plan area; and

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

WHEREAS, in accordance with Section 375.001(h) and (l) of the Texas Local Government Code, DMD desires to support the City in the development and funding of the Program, as the Program is an improvement project or service which will preserve, maintain, and enhance the economic health and vitality of the metropolitan area as a community and business center; and

WHEREAS, the Council finds that the Program would be in the public interest and serves an important public purpose in that assisting to cure deteriorated conditions, increasing economic development, and making Downtown El Paso attractive and serviceable to all is a public benefit to the citizens of El Paso;

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

THAT the Mayor be authorized to sign the Interlocal Agreement with the El Paso Downtown Management District ("DMD") under which the City's Economic Development Department shall administer the City's Downtown Facade Improvement Program with technical assistance and a financial contribution from DMD.

ADOPTED this _____ day of _____, 2007.

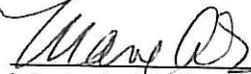
CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Department of Economic
Development

CITY CLERK DEPT.
07 SEP -4 AM 9:54

STATE OF TEXAS §
COUNTY OF EL PASO §

INTERLOCAL AGREEMENT

THIS AGREEMENT, made this ____ day of September 2007, 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.

WITNESSETH:

WHEREAS, on July 10, 2006, the City Council (“the Council”) of the City passed and approved a resolution, concerning the preparation and implementation of a Downtown Redevelopment Plan, in which the Council expressed its determination that a revitalization strategy is necessary to address the critical needs of the downtown area in order to foster and support economic growth and opportunity; and

WHEREAS, on October 31, 2006, the Council passed and approved Ordinance No. 016487, incorporating the Downtown 2015 Plan (“the Plan”) into the City’s comprehensive plan entitled *The Plan for El Paso* and directing the City Manager to prepare an Implementation Strategy for execution of the Plan, with particular focus to phasing, implementation tools and financing mechanisms to be utilized to carry out the intent of the Plan; and

WHEREAS, the Plan envisioned that the Implementation Strategy would include a package of incentives and policies that will encourage and energize continued and more expansive investment and improvement in the whole of downtown; and

WHEREAS, the City desires to implement a Downtown Facade Improvement Program (“the Program”), as one of several incentive programs that are part of the Implementation Strategy for the Plan; and

WHEREAS, the purpose of the Program is to provide funding to existing businesses and/or property owners to encourage improvement and rehabilitation of their buildings in the Plan area; and

WHEREAS, attractive business facades support and encourage consumer activity and can positively impact the marketability of the Downtown area, to attract both local consumers and tourists; and

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

WHEREAS, in accordance with Section 375.001(h) and (l) of the Texas Local Government Code, DMD desires to support the City in the development and funding of the Program, as the Program is an improvement project or service which will preserve, maintain, and enhance the economic health and vitality of the metropolitan area as a community and business center; and

WHEREAS, the Board of Directors of the DMD and the Council find that the Program would be in the public interest and serve a public benefit to the citizens of El Paso by increasing economic development and by making Downtown El Paso attractive and serviceable to all; and

WHEREAS, City and DMD have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the Parties specify that any party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party.

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 Independent Contractors. The Parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.1-1 As an independent contractor, DMD understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to DMD's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.1-2 As an independent contractor, the City understands and agrees that it will be responsible for its respective acts or omissions, and DMD shall in no way be responsible as an employer to the City's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.2 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.

- 1.3 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 DMD enter into this Agreement as governmental entities for the purpose of performing a governmental function.

2.0 PURPOSE OF THE PROGRAM

- 2.1 The purpose of the Program is to provide services to downtown El Paso business and property owners by providing matching grants as an incentive to bring about exterior renovations to business storefronts that are located in the Downtown 2015 Plan study area and in those areas within the boundaries of the DMD which are not within the Downtown 2015 Plan, said designated geographical areas are specifically set forth in Exhibit "A", attached hereto and made a part of this Agreement. There will be a one dollar-to-one dollar match up to \$10,000.00 as the maximum reimbursement grant amount for approved improvements per project, subject to funding availability.

2.1-1 Grants will be given for facade improvement that would serve to restore, rehabilitate, enhance or beautify the structure. Eligible improvements include:

- Signs (new, repairs, replacement, removal)
- Grate and grate box removal or conversion of solid grates to an open mesh style
- Awnings
- Lighting
- Paint
- Removal/replacement of inappropriate or incompatible exterior finishes or materials
- Recessing/reconfiguring entrances
- Removal of extraneous elements
- Door/window replacement or repair
- Exterior cleaning
- Historical architectural elements

Applicants will be encouraged to promote historic preservation, energy efficiency, and accessibility standards in designing improvements, to the extent that they are financially feasible.

3.0 SCOPE OF CONTRIBUTION AND SERVICES

- 3.1 The City and DMD agree to make the contributions and provide the services in furtherance of the Program as more fully described in the Scope of Contributions and Services attached to this Agreement as Exhibit "B" and expressly incorporated herein and made a part of this Agreement for all purposes.
- 3.2 Funds contributed to the Program by DMD shall not be used to fund grants for properties that are located outside the DMD boundaries.

4.0 TERM AND TERMINATION

- 4.1 Term. This Agreement shall be effective on _____, 2007 for a term of one year, unless sooner terminated as hereinafter provided.
- 4.2 Termination. 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 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 sixty (60) days prior written notice to the other party.
- 4.2-4 Disposition of Remaining Funds. In the event this Agreement is terminated as per Section 4.0 of this Agreement, any remaining balance of funds attributed to the DMD's grant will be returned to the DMD. Additionally, any approved matching grant that had been approved prior to the termination, but not yet reimbursed at the time of termination, will be reimbursed to the applicant upon successful completion of all requirements as per the conditions of the grant.

5.0. GENERAL PROVISIONS

5.1. Risk Allocation-Limitation of Liability

5.1-1 No Indemnification. The Parties expressly agree that no 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.

5.1-2 Sovereign Immunity. The Parties expressly agree that, in all things relating to this Agreement, the City and DMD are each performing a governmental function, as defined by the Texas Tort Claims Act. The City and 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. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by the applicable law shall be enforceable.

5.1-3 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, or other economic damage, and further including injury to property, mental anguish and emotional distress-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.

5.1-4 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY THE OTHER PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE BY THE ONE PARTY TO THE OTHER UNDER THE TERMS OF THIS AGREEMENT.**

- 5.1-5 Intentional Risk Allocation. The City and 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.
- 5.2 Governing law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.
- 5.3 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.
- 5.4 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.
- 5.5 Assignability. This Agreement and the obligations hereunder shall not be assigned, transferred or encumbered in any manner without the written consent of the City.
- 5.6 Severability. All agreements and covenants contained in this Agreement are severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or illegal or unenforceable, the parties intend that all other terms or provisions of this agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 5.7 Notices. All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: City of El Paso
Attn: Economic Development Department
2 Civic Center Plaza
El Paso, TX 79901

DMD: El Paso Downtown Management District
Attn: Michael E. Breitingger, Executive Director
201 E. Main, Suite 1603
El Paso, TX 79901

- 5.8 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. This Agreement supersedes all prior agreements, whether written or oral and 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. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.
- 5.9 Discrimination Prohibited. 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.
- 5.10 Amendments. This Agreement shall not be modified, amended or changed except upon a written instrument signed by authorized representatives of the parties.
- 5.11 Waiver. The failure of any 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 a 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.
- 5.12 Captions. The captions to the various paragraphs of this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.
- 5.13 Warranty of Capacity to Execute Contract. Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Attachments); understands its terms; is duly authorized to execute this Agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

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

(Signatures on Following Page)

CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



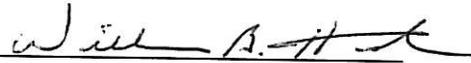
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Kathryn B. Dodson, Ph.D., Director
Economic Development Department

**EL PASO DOWNTOWN
MANAGEMENT DISTRICT ("DMD"):**

By: 

William B. Hooten, President

ATTEST:



Name (printed)

Secretary

Exhibit “B”

Scope of Contributions and Services

- I. The City will provide the following:
 - A. Administration of the Program, as Program Administrator, including the following services:
 - 1. Administration
 - 2. Coordinating review of projects and presenting eligible project costs
 - 3. Work with applicants to revise, design, etc. their projects
 - 4. Facilitate fast track permitting and coordination of city services
 - 5. Establishing and support for a Review Committee to be comprised of: deputy director or designee of Planning, deputy director or designee of Building Permits and Inspection, Development Services Department, director or designee or Economic Development Department, and DMD representative
 - 6. Staff for application and review committee support
 - B. Financial Contribution
 - 1. Financial assistance to the Program in the amount not to exceed FIFTY THOUSAND AND NO/100TH DOLLARS (\$50,000.00), to be dedicated as the funding source for the reimbursable grants during the term of the Agreement.
 - C. Outreach and Marketing as lead entity
- II. The DMD will provide the following:
 - A. Financial Contribution
 - 1. Within sixty (60) days of execution of the Agreement by both parties, financial assistance to the Program in the amount not to exceed FIFTY THOUSAND AND NO/100TH DOLLARS (\$50,000.00) as a supplement to the City’s contribution to provide reimbursable grants to Program applicants for improvement work on properties located in the DMD boundaries only.
 - B. Review Committee Participation
 - C. Outreach and Marketing