

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

**DEPARTMENT:** Planning & Economic Development

**AGENDA DATE:** November 8, 2011 (Regular)

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

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

Discussion and action on a Resolution that the Mayor be authorized to sign the Interlocal Agreement between the City of El Paso and the El Paso Downtown Management District ("DMD") concerning the administration and funding of a joint Downtown Commercial Façade Improvement Grant Program, under the terms and conditions set forth in the Interlocal Agreement (District 8) [Planning & Economic Development, Mathew McElroy, (915) 541-4193]

**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 \$25,000 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 the DMD Marketing review committee. The City of El Paso, the Tax Increment Reinvestment Zone and the Downtown Management District have designated \$200,000 towards the program. The City of El Paso will allocate \$100,000, TIRZ \$50,000 & DMD \$50,000. Each grant will fund up to half of the façade improvement cost or a maximum of \$25,000 and \$1,000 as the minimum.

**PRIOR COUNCIL ACTION:**

Yes, previous contracts for a façade program with DMD were in place in 2007 & 2003.

**AMOUNT AND SOURCE OF FUNDING:**

Funded jointly by the City, TIRZ and the DMD with \$100,000 from the General Fund, \$50,000 from TIRZ and \$50,000 from DMD. City funds have been budgeted in the Economic Development Department 720150035/15462/PED00002

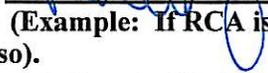
**BOARD/COMMISSION ACTION:**

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

**WHEREAS**, the City has established a Commercial Façade Improvement Grant Program for Tax Increment Reinvestment Zone (TIRZ) No. 5 (“existing Program”), as a redevelopment incentive program under the project and reinvestment financing plans for TIRZ No. 5 (the “Zone”); and

**WHEREAS**, the purpose of the existing Program is to provide match grant funding to existing businesses and/or property owners to encourage improvement and rehabilitation of the exterior of privately owned buildings in the Zone; and

**WHEREAS**, the City Council finds that attractive business façades support and encourage consumer activity and can positively impact the marketability of the Downtown area, to attract both local consumers and tourists; and

**WHEREAS**, the City Council desires to expand the existing Program by enlarging the geographic area eligible for participation to include the DMD and Downtown 2015 Plan area boundaries, allocating additional TIRZ and general revenue funds to the Program, and by collaborating with DMD in efficient administration of and financial support as a joint Program; and

**WHEREAS**, the DMD now desires to support the City in the development and funding of the joint Program, to be renamed the “Downtown Commercial Façade Improvement Grant Program,” as the Program will be 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 City Council finds that the joint 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.

**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 between the City of El Paso and the El Paso Downtown Management District (“DMD”) concerning the administration and funding of a joint Downtown Commercial Façade Improvement Grant Program, under the terms and conditions set forth in the Interlocal Agreement.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

[Signatures on Following Page]

CITY OF EL PASO

ATTEST:

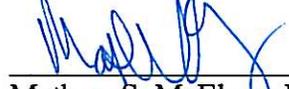
\_\_\_\_\_  
John F. Cook  
Mayor

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mathew S. McElroy, Deputy Director  
Planning and Economic Development



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 DMD and the CITY find that the joint Program would be in the public interest and serve a public benefit to the citizens of El Paso by increasing downtown economic development and 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 mutual covenants and promises contained in this Agreement, the parties agree as follows:

**1. 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 limited to employer-employee or principal-agent. No provision in 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. PURPOSE OF THE PROGRAM**

- 2.1 The purpose of the Downtown Commercial Façade Improvement Grant Program ("joint Program") is to provide match grant funding to existing businesses and/or property owners to encourage improvement and rehabilitation of the exterior of privately owned buildings that are located in the Zone, the Downtown 2015 Plan area, and in those areas within the boundaries of the DMD, which are not within the Downtown 2015 Plan or the Zone (collectively, the "Program Area"). The geographic areas that encompass the Program Area are specifically set forth in Exhibit "A", attached hereto and made a part of this Agreement.

2.1-1 The Program requirements will include the following:

- (A) There will be a one dollar-to-one dollar match up to \$25,000.00 as the maximum and \$1,000 as the minimum reimbursement grant amount for approved improvements per project, subject to funding availability and on a first-come, first-served basis.
- (B) Grants will be given for façade improvements that serve to restore, rehabilitate, enhance or beautify the exterior of 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; streetscape; and Historical architectural elements.
- (C) 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. SCOPE OF CONTRIBUTION AND SERVICES

#### 3.1 Responsibilities of the DMD:

- 3.1.1 The DMD will provide all programmatic management services for administration of the joint Program and will act as the Program Administrator, in conformance with the Program guidelines, to be provided by the CITY. The management services will include coordinating review of applicants' projects and analyzing eligible project costs, and support staff services for application processing and review committee work. The DMD will also provide public outreach and marketing for the joint Program.
- 3.1.2 In conjunction with designated CITY staff, the DMD will assist applicants with revision, design, and submittal of their projects for funding consideration. Members of the DMD's Marketing Committee and two (2) CITY staff and the CITY's Historic Preservation Officer, when appropriate, will form the Review Committee to decide on the eligibility and funding of all projects under this Agreement.
- 3.1.3 Within sixty (60) days of the execution date of this Agreement, the DMD will authorize the expenditure of funds to the joint Program in an amount not to exceed \$50,000.00, to be used as a funding source for matching grants for only

those approved projects that are located in the boundaries of the DMD.

3.1.4 The DMD will provide fiscal management services for the joint Program, to include fund account management and grant disbursement.

3.1.5 Regardless of the funding source for the particular approved project, the parties agree that the DMD will be authorized to execute the grant agreements with the approved applicants during the term of this Agreement.

3.2 Responsibilities of the City:

3.2.1 As of September 2011, the existing Program fund balance was approximately \$9,000.00 in restricted TIRZ funds. On September 8, 2011, the Board of Directors of TIRZ No. 5 recommended the allocation of an additional \$41,000.00 in TIRZ funds. By separate action, the CITY has or will allocate an additional \$41,000.000 to the joint Program, for a total of \$50,000.00 in TIRZ funds for use as match grant funding for only those approved projects that are located within the Zone boundaries.

3.2.2 The CITY will allocate from its general revenue funds the additional financial contribution of \$100,000.00, to the joint Program for use as match grant funding for only those approved projects that are located within the Downtown 2015 Plan area.

3.2.3 Within sixty (60) days of the execution date of this Agreement, the CITY will contribute the allocated funds to the DMD in an amount not to exceed \$150,000.00 for the joint Program.

3.3 The parties acknowledge and expressly agree that, in all things relating to this Agreement, the CITY and the DMD are performing governmental functions, as defined by the Texas Tort 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.

4. **TERM AND TERMINATION**

4.1 Term. This Agreement shall become effective on the date of approval of the last signatory to the Agreement and shall end five (5) years thereafter, unless sooner terminated as provided by this Agreement.

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 expires or is terminated as per Section 4.0 of this Agreement, any remaining balance of funds attributed to a party's contribution will be returned to that party; provided, however, any approved matching grant to be funded by the City's contribution 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, with that portion of City funding treated as encumbered and not subject to return.

## 5. **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.

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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. 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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. GENERAL PROVISIONS

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 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.

7.8 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.

7.9 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.

7.10 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: Director, Planning and Economic  
Development  
Two Civic Center Plaza, 2nd Floor  
El Paso, Texas 79901-1196

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

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

7.11 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.

7.12 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.

- 7.13 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.
- 7.14 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.

**IN WITNESS WHEREOF**, the CITY and DMD have executed this Agreement in the City of El Paso, to be effective as of the date of the last signatory to this Agreement.

**CITY OF EL PASO**

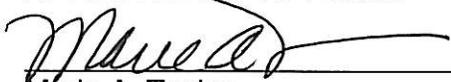
By: \_\_\_\_\_  
John F. Cook, Mayor

Signature date: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mathew S. McElroy, Deputy Director,  
Planning and Economic Development

[Signatures Continue on Following Page]

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

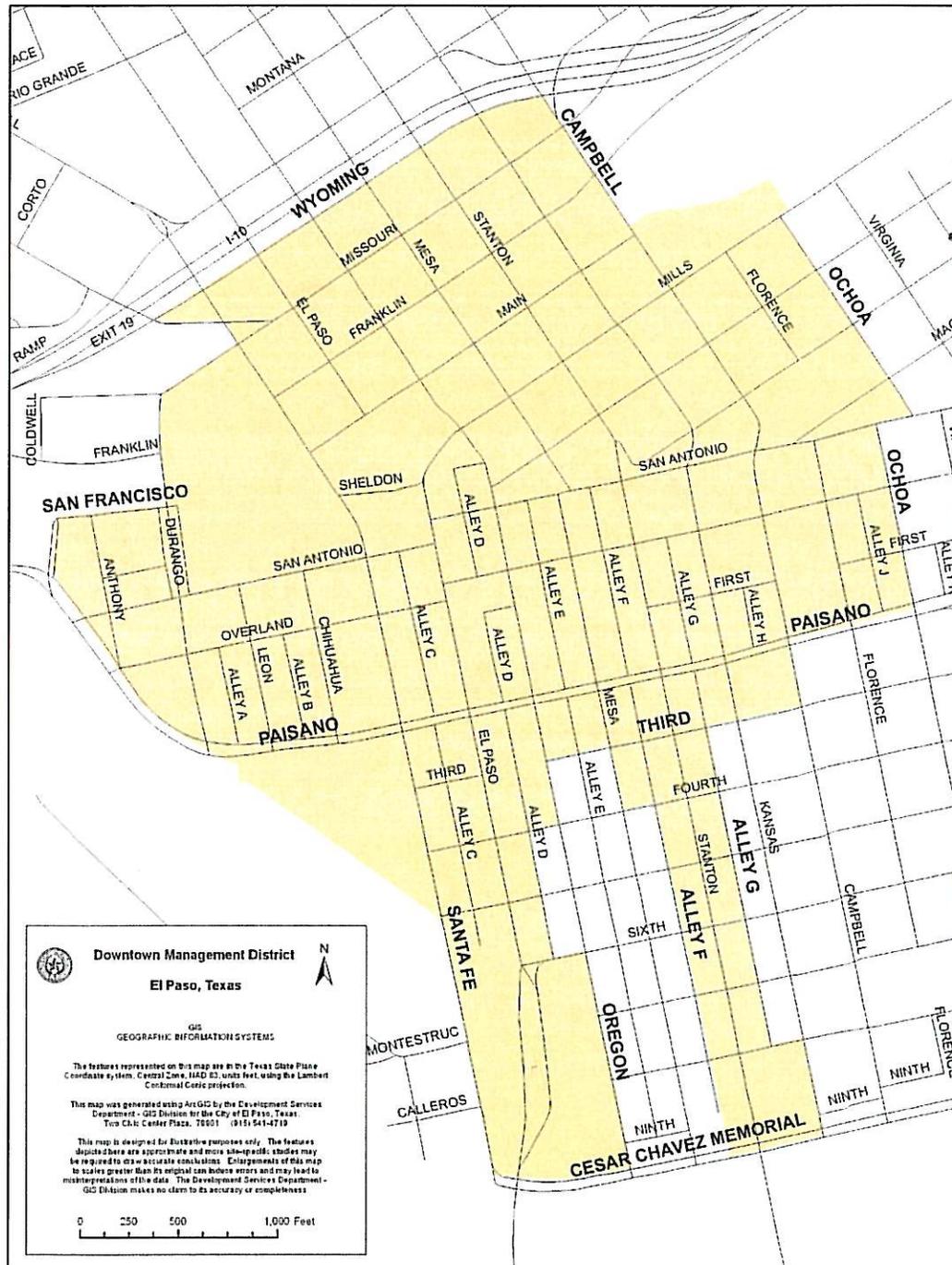
By: \_\_\_\_\_  
Robert S. Ayoub, President, Board of Directors

Signature date: \_\_\_\_\_

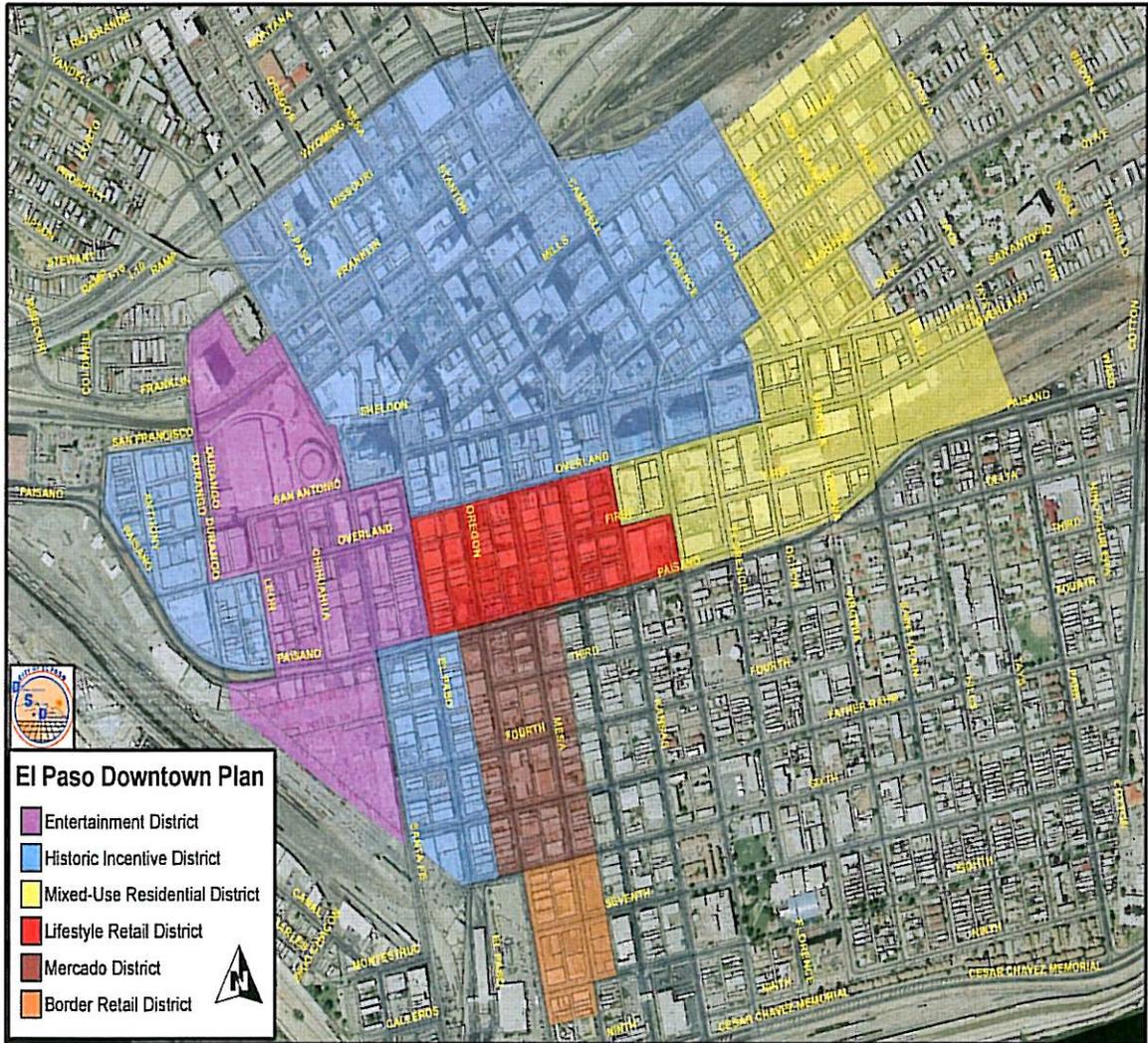
ATTEST:

\_\_\_\_\_  
Michael D. McQueen, Secretary

El Paso Downtown Management District (DMD) boundary:



Downtown 2015 Plan area boundary:



TIRZ No. 5 boundary:

