

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

DEPARTMENT: Department of Transportation

AGENDA DATE: 11-15-2011

CONTACT PERSON NAME AND PHONE NUMBER: Mirian Spencer, (915) 541-4482, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

Discussion and action regarding 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 perform certain functions for the City's Department of Transportation in connection with the processing and issuing of special privilege permits for applicants seeking to hold events within the Downtown Plan Area that utilize public rights-of-way, subject to the terms and conditions in the Amendment to Interlocal Agreement.

BACKGROUND / DISCUSSION:

This amendment to the Interlocal Agreement between the Downtown Management District (DMD) and the City of El Paso provides a process for applicants to seek consolidated agency contact when planning events within the Downtown Improvement District.

PRIOR COUNCIL ACTION:

A Resolution authorizing the Mayor to sign an Interlocal Agreement between the City of El Paso and the DMD was approved by City Council on February 1, 2011 which allowed for the DMD to provide certain economic development services and supplemental sanitation services.

AMOUNT AND SOURCE OF FUNDING:

\$5,000.00 - Planning and Economic Development, 72010268-01101-502215

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

**Daryl W. Cole, Director
Department of Transportation**

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 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 perform certain functions for the City's Department of Transportation in connection with the processing and issuing of special privilege permits for applicants seeking to hold events within the Downtown Plan Area that utilize public rights-of-way, subject to the terms and conditions in the Amendment to Interlocal Agreement.

ADOPTED this _____ day of November, 2011.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:

Daryl W. Cole, Director
Department of Transportation

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.

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).

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:

