

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

DEPARTMENT: Economic & International Development
AGENDA DATE: September 29, 2020 (Regular)
CONTACT PERSON: Elizabeth Triggs, TriggsEK@elpasotexas.gov
DISTRICT(S) AFFECTED: District 8

SUBJECT:

A resolution authorizing the Mayor to sign, on behalf of the City of El Paso, an Interlocal Agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "District") to increase the efficiency and effectiveness of each party in its provision of services to preserve, maintain and enhance the economic health and vitality of the downtown El Paso area.

BACKGROUND / DISCUSSION:

The City and the El Paso Downtown Management District (the "District") have historically worked together to achieve mutually desirable outcomes for the benefit of downtown businesses, residents and visitors through effective and efficient service delivery, including but not limited to supplemental sanitation services, marketing and promotion services, and economic development services. As a municipal management district organized under Chapter 375 of the Texas Local Government Code and in accordance with Chapter 791 of the Texas Government Code, the District may enter into an interlocal agreement with the City for the provision of these services. The services contained in this agreement are intended to supplement existing City services in order to stimulate commercial development and business activity in the downtown El Paso area. The Agreement includes a five-year term with one-year extension options subject to City Council approval.

Services in which the City and District will partner under this Agreement include: 1) sanitation services; 2) downtown special event permitting; 3) wayfinding kiosk and content management; 4) downtown street banner content management; 5) bike rack accessibility program; 5) commercial façade improvement program; 6) business recruitment, retention and expansion partnership; and 6) other public outreach and marketing services on an as needed basis.

With respect to sanitation services, the District is responsible for the provision of sanitation services intended to supplement the City's efforts. Such services include: 1) at least daily pedestrian trashcan abatement; 2) illegal dumping clean-up; 3) first floor graffiti abatement; 4) public asset power washing; 5) minor maintenance of public assets; 6) City-event clean-up; 7) sidewalk, alley and park litter abatement; 8) sidewalk power washing; 9) gum removal; and 10) seasonal weed abatement. As consideration for the provision of these mutually beneficial services, the City and the District agree to share service costs with the City's contribution capped at \$233,475 annually over the term of the Agreement and subject to a minimum contribution of \$86,125 annually from the District. City's annual commitment represents a

The City's commitment for other District provided services under this Agreement include:

- Downtown Special Event Permitting: \$6,500 annually for first 10 events plus \$650 for each event thereafter;
- Wayfinding Kiosk and Street Banner Content Management: waiver of street rental and permit fees, as applicable
- Bike Rack Accessibility Program: waiver of street rental and permit fees, as applicable
- Commercial Façade Improvement Program: \$100,000 annually approved January 2020 through TIRZ 5 Project Plan Amendment (Ordinance No. 019021)
- Business Recruitment, Retention and Expansion Partnership: time commitment to develop work plan and identified deliverables

- Other Public Outreach and Marketing services: provided on a task-order basis

PRIOR COUNCIL ACTION:

In February 2011, the City and District entered into an Interlocal Agreement for the provision of supplemental sanitation services. Through the term of the agreement, several amendments were adopted expanding the partnership and scope of services provided. In November 2011, the City and District entered into an Interlocal Agreement for the establishment of the Commercial Façade Improvement Program wherein the District would serve as program administrator. In February 2016, the Interlocals were terminated and combined into a single agreement. The current Interlocal expires on September 30, 2020.

AMOUNT AND SOURCE OF FUNDING:

- Sanitation Services: 334-3430-2305-521170
- Special Event Permitting: 522360-280-2323-28630-P2812-PED000020
- Commercial Façade Improvement Program: 2302-480-48050-552000

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Elizabeth Triggs
for: Jessica Herrera, Director
Economic & International Development Department

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 Interlocal Agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "District") to increase the efficiency and effectiveness of each party in its provision of services to preserve, maintain and enhance the economic health and vitality of the downtown El Paso area.

APPROVED this _____ day of _____, 2020.


CITY OF EL PASO, TEXAS

Dee Margo
Mayor

ATTEST:

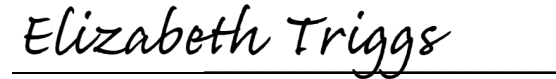
Laura Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



for: Jessica Herrera, Director
Economic and International Development

STATE OF TEXAS § **INTERLOCAL AGREEMENT**
 §
COUNTY OF EL PASO §

This **Interlocal Agreement** (“Agreement”) is entered into by and between the **City of El Paso, Texas** (the “City”), a home-rule municipal corporation in the State of Texas situated in El Paso County, acting by and through its governing body, the City Council (“City Council”), and the **El Paso Downtown Management District** (the “District”), a municipal management district and political subdivision of the State of Texas organized under Chapter 375 of the Texas Local Government Code and legally created by order of the Texas Natural Resources Conservation Commission on March 10, 1997, acting by and through its Board of Directors (“District Board”). The City and the District are sometimes referred to in this Agreement collectively as “Parties” and individually as “Party.”

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the City and the District, to contract with each other to perform governmental functions and services; 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), the District desires to implement activities to preserve, maintain and enhance the economic health and vitality of the downtown El Paso area; and

WHEREAS, in accordance with Section 375.001(c) and (g), the District desires to supplement certain sanitation services within the downtown El Paso area to promote the health, safety and general welfare of residents, employers, employees, and consumers in the District and the general public; and

WHEREAS, the City and the District believe that a cooperative agreement between the Parties will provide a mutual benefit to both entities and serve the governmental purpose of stimulating commercial development and business activity in the downtown El Paso area; and

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

WHEREAS, the Parties specify that any Party paying for the performance of said governmental functions shall make those payments from current revenues available to the paying Party; and

WHEREAS, the Parties wish to enter into this Agreement which increases the efficiency and effectiveness of each Party in its provision of services to preserve, maintain and enhance the economic health and vitality of the downtown El Paso area

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations and benefits contained in this Agreement, the Parties agree as follows:

ARTICLE 1. AGREEMENT PURPOSE

- 1.1. **Purpose.** The purpose of this Agreement is to define the responsibilities of the City or the District as they relate to the joint provision of sanitation, marketing, event attraction and promotion, and economic and commercial development services within Downtown El Paso to stimulate commercial development and business activity and promote accessibility and consumer traffic within the Service Area.

ARTICLE II. EFFECTIVE DATE AND TERM

- 2.1. **Effective Date.** The Effective Date of this Agreement shall be October 1, 2020.
- 2.2. **Term.** The Term of this Agreement shall commence on the Effective Date and end on whichever of the following occurs first: (i) September 30, 2025; (ii) the date the District is dissolved; or (iii) the date this Agreement is terminated as provided in Article XXI. This Agreement may be extended for additional one-year terms beyond the initial term upon mutual agreement of both Parties. Any extensions shall be authorized by the City Council, evidenced by a duly authorized resolution, on an annual basis. In the event the District is dissolved prior to the end of this Agreement, this Agreement shall automatically terminate without any action by either Party.

ARTICLE III. DEFINITIONS

- 3.1. **Agreement** means this Interlocal Agreement entered into between the City and the District.
- 3.2. **Annual Report** means the report due to the City from the District detailing its performance of activities under this Agreement and its performance related to key performance indicators identified in **Exhibit A** attached and incorporated herein. Such Annual Report shall be due to the City on or about every month of October following the Effective Date of this Agreement and shall be
- 3.3. **Bike Racks** means bicycle parking facilities located on the Public Right-of-Way in accordance with applicable City Regulations.
- 3.4. **Business Retention, Recruitment and Expansion Program** (or “BRRE Program”) means the partnership undertaken by the Parties to establish a program within the Service Area that serves to assist in the retention of existing businesses; facilitates business growth and expansion; enhances the business climate; and strengthens community partnerships with businesses.
- 3.5. **City** means the City of El Paso, Texas, a home-rule municipal corporation in the State of Texas situated in El Paso County.
- 3.6. **City Code** means the City’s Code of Ordinances, as may be amended from time-to-time.

- 3.7. **City Council** means the governing body of the City.
- 3.8. **Critical Corridors** means high traffic corridors where significant public and/or private investment has been made, and include: Public Right-of-Ways adjacent to San Jacinto Plaza, W. Mills Ave. and Sheldon Ct. between N. Oregon St. and S. Santa Fe St., and S. El Paso St. between the intersection of W. Mills Ave. and Sheldon Ct. and E. 6th Ave. and as further identified and incorporated herein the attached **Exhibit B**.
- 3.9. **City Regulations** means all applicable ordinances, rules and regulations of the City including, but not limited to, the City Code and the rules and regulations of the State of Texas, its agencies and other political subdivisions and governmental entities, if any, having jurisdiction over the Service Area.
- 3.10. **Disposal Location** means the Delta Transfer Station located at 4200 Delta, El Paso, Texas 79905 when disposal occurs Tuesday through Friday from 8 am to 5 pm and Saturday from 8 am to 4 pm; or two roll-off containers located at the Delta Corral when disposal occurs Sunday, Monday or hours other than those identified for disposal at the Delta Transfer Station. The Disposal Location shall be provided by the City at no cost to the District.
- 3.11. **District** means the El Paso Downtown Management District, a municipal management district and political subdivision of the State of Texas organized under Chapter 375 of the Texas Local Government Code.
- 3.12. **District Board** means the governing body of the District.
- 3.13. **Downtown Content Management Area** means the area where the District shall serve as the lead entity responsible for Wayfinding Kiosk and Street Banner content, as further identified and incorporated herein in the attached **Exhibit C**.
- 3.14. **Effective Date** has the meaning found in Section 2.1 of this Agreement.
- 3.15. **Façade** means the principal face(s) of a building that look(s) onto a public street or park.
- 3.16. **Program Area** means the area in which businesses and properties are eligible for participation in the Commercial Façade Improvement Program, as further identified and incorporated herein in the attached **Exhibit D**.
- 3.17. **Public Assets** means the City-owned street furniture, benches, drinking fountains, fountains, public art, street planters, trash receptacles, recycling receptacles, parklets, other public streetscape improvements, pedestrian lighting, signage, equipment and signal cabinets, kiosks, and other related improvements in the public right-of-ways and parks.

- 3.18. **Public Right-of-Way** means any street, sidewalk, alley and/or easement dedicated to the public use, as further defined by the City Code.
- 3.19. **Service Area** is the area where the District shall provide certain services specified in this Agreement, as further identified and incorporated herein in the attached **Exhibit E**.
- 3.20. **Special Event** means any bazaar, block party, street dance, sidewalk sale, show, exhibition, festival, concert, celebration or other event that requires the full or partial closure or occupation of a Public Right-of-Way and is not classified as a film-making event, temporary event, picket, demonstration, parade, public assembly, or private property event as defined by the City Code.
- 3.21. **Commercial Façade Improvement Program** or “Program” means the program administered by the District and generally intended to provide matching grant funds to facilitate the improvement and rehabilitation of the exteriors of privately owned buildings located in the Program Area.
- 3.22. **Street Banner** means a Public Asset and decorative outdoor informational display fastened to a City-owned street light or utility pole located in the Public Right-of-Way.
- 3.23. **Term** has the meaning found in Section 2.2 of this Agreement.
- 3.24. **Wayfinding Kiosk** means a Public Asset and small structure located on the sidewalk portion of the Public Right-of-Way intended to provide information and help pedestrians and/or bicycle traffic navigate downtown El Paso, including but not limited to the display boards located in Union Plaza.

ARTICLE IV. SANITATION SERVICES

- 4.1. **Purpose and District Responsibilities.** The District shall provide, either directly or through a subcontractor, certain sanitation services within the Service Area, coordinated with and supplementing the City’s sanitation services, to maintain an attractive pedestrian environment within the Service Area. The District shall retain supervisory authority over subcontracted personnel, if any, to assure that services are performed in accordance with this Agreement and all applicable laws. Sanitation services to be provided by the District shall include Group A and Group B services as identified and listed below:
 - 4.1.1. **Group A Services.** The District shall provide the following supplemental sanitation services within the Service Area:
 - 4.1.1.1. **Pedestrian Trashcan Abatement.** The District shall regularly empty pedestrian trash receptacles located within the Service Area’s Public Right-of-Ways and parks as required to maintain adequate remaining capacity. For the purposes of this Agreement, “adequate remaining capacity” shall mean less than half full and “regularly” shall mean once daily, seven days per workweek (Monday through Sunday) with the exception 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 District. The District shall be responsible for the disposal of pedestrian trash receptacle contents at the Disposal Location. The District shall not be responsible for residential trash collection services.

4.1.1.2. **Illegal Dumping Clean-Up.** The District shall provide illegal dumping clean-up services within the Service Area, as needed. The District shall be responsible for the disposal of collected refuse at a mutually agreeable location provided by the City at no cost to the District.

4.1.1.3. **Graffiti Abatement.** The District shall inspect for and remove graffiti from Public Assets and public art within the Service Area, as well as from the first floor of any building or structure which is next to or visible from the Public Right-of-Ways in accordance with the City Regulations. Graffiti includes paint, handbills and stickers, but does not include scratched or etched surfaces. The District shall make reasonable effort to remove graffiti within a 48 hour period from the time of discovery.

4.1.1.4. **Public Asset Power Washing.** The District shall provide for at least monthly power washing of certain high touch Public Assets located on sidewalks or in parks, including but not limited to bus and streetcar stops, benches, pedestrian trash cans, and parklets.

4.1.1.5. **Minor Maintenance of Public Assets.** The District shall be responsible for minor maintenance and repair of Public Assets located on sidewalks or in parks, including but not limited to benches and pedestrian trash cans.

4.1.1.6. **City Event Clean-Up.** The District shall provide post event clean-up services for City events occurring on public right-of-ways within the Service Area in accordance with the City Regulations at no cost to the City.

4.1.2. **Group B Services.** The District shall additionally provide the following supplemental sanitation services within the Service Area:

4.1.2.1. **Sidewalk, Alley and Park Litter Abatement.** The District shall regularly clean and sweep to remove litter from public sidewalks, alleys, and parks, to include tree wells and parkways, located within Public Right-of-Ways and parks in the Service Area. For the purposes of this Agreement, “regularly” shall have the meaning ascribed to it in Subsection 4.1.1.1 of this Agreement. The District shall be responsible for the disposal of abated litter at the Disposal Location.

4.1.2.2. **Sidewalk Power Washing.** The District shall provide sidewalk power washing services at least quarterly in selected high traffic areas within the Service Area with Critical Corridors receiving first priority. The locations and frequency of service shall depend on weather, season, and the need for such services. All sidewalks

within the Service Area shall be periodically inspected by the District for sidewalk power washing and scheduling.

4.1.2.3. **High Traffic Pedestrian Trashcan Abatement.** In addition to regularly emptying pedestrian trash receptacles located within the Service Area's Public Right-of-Ways and parks as required to maintain adequate remaining capacity, the District shall empty receptacles on Critical Corridors and other high traffic areas an additional one or two times a day and on an as needed basis to maintain adequate remaining capacity as described in Subsection 4.1.1.1.

4.1.2.4. **Gum Removal.** The District shall provide gum removal services for Service Area sidewalks a minimum of eight hours and covering approximately two blocks per week in selected high traffic areas with Critical Corridors receiving first priority.

4.1.2.5. **Weed Abatement.** The District shall provide seasonal abatement of weeds located in the Public Right-of-Ways.

4.1.3. **Other Sanitation Services.** In addition to those identified in this Section, the District may provide other supplemental sanitation services within the Service Area as defined and allowed within Chapter 375 of the Texas Local Government Code, and as deemed fitting and appropriate by the District, however, the cost of such services shall not be passed onto the City

4.1.4. **Sanitation Equipment and Personnel.** The District shall own, maintain and operate the necessary equipment to perform the sanitation services identified in this Section. Further, the District shall supervise and train personnel in the operation and maintenance of the equipment. The District shall be solely responsible with regard to any matter or claim of whatsoever nature as to the supervision, training, activities, and responsibility by or for these persons. Without waiving this responsibility in any manner, it is understood that the District may contract with responsible third parties in order to execute these sanitation services.

4.1.5. **Final Accounting.** The District shall provide to the City a final accounting of the actual costs associated with providing the sanitation services set forth in Section 4.1 to be delivered within 90 days following the end of any given District fiscal year. The final accounting is for the purpose of City verification that it paid no more than the City's proportionate share, in accordance with Section 4.2 of this Agreement.

4.2. **City Responsibilities.** With respect to sanitation services within the Service Area, the City shall be responsible for the following:

4.2.1. **Non-District Sanitation Services.** The City shall maintain current levels of sanitation services within the Service Area for those services not identified in Subsection 4.1 of this Agreement as District responsibilities; such services to be the City's responsibility include,

but are not limited to, street sweeping and periodic parkway and median weed abatement, graffiti abatement above the first floor of buildings and/or structures, tree and irrigation maintenance located within Public Right-of-Ways and parks, and residential trash collection services.

- 4.2.2. **Major Maintenance of Public Assets.** The City shall provide major maintenance of Public Assets, including pedestrian trash receptacles, benches, parklets and Wayfinding Kiosks. Such major maintenance includes but is not limited to, the removal and/or replacement of units when necessary and, with respect to pedestrian trash receptacles, the replacement of internal hard-plastic liners. Subject to funding availability, the City may, at the District's request, install and/or relocate trash receptacles in mutually agreeable areas to improve Service Area sanitation.
- 4.2.3. **Trash Disposal and Sanitation Equipment Storage Location.** The City shall provide containers and disposal service for all trash collected by the District at no cost to the District. The Disposal Location shall be provided by the City for trash disposal and District sanitation vehicle and equipment storage at no cost to the District.
- 4.2.4. **Contribution for Services.** In exchange for the District's provision of the supplemental sanitation services identified in Section 4.1, the City shall pay to the District the City's proportionate share of costs. The City's proportionate share is defined as follows:
 - 4.2.4.1. **Group A Services.** For "Group A" services identified in Subsection 4.1.1, the City shall pay to the District an annual amount not to exceed \$147,350.00 or 100 percent of the District's actual costs for provision of Group A services plus a 15 percent management fee, whichever is less.
 - 4.2.4.2. **Group B Services.** For "Group B" services identified in Subsection 4.1.2, the City shall pay to the District an annual amount not to exceed \$86,125.00 or 50 percent of the District's actual costs for provision of Group B services without any additional profit or overhead charge by the District, whichever is less.
 - 4.2.4.3. **Payment Due Date.** The first payment shall be due within 30 days of the Effective Date of this Agreement. Each subsequent payment shall be due on October 30th of each year during the Term of this Agreement subject to City receipt of a complete Annual Report due on or about every October following the Effective Date of this Agreement.
 - 4.2.4.4. **Final Accounting.** The District, in accordance with Section 4.1, agrees to provide to the City a final accounting of the actual costs associated with providing the sanitation services set forth in Section 4.1 to be delivered within 90 days following the end of any given District fiscal year. The final accounting is for the purpose of City verification that it paid no more than the City's proportionate share, in accordance with this Subsection.

4.2.4.5. **Overpayment.** If the City determines that the City has contributed more than the City's proportionate share as identified in Subsection 4.2.4 of this Agreement following: (i) inspection of the final accounting and any relevant records and (ii) a 60 day notice and opportunity to cure period, and failure to cure the same, then the District shall reimburse to the City, within 60 days receipt of the notice, an amount equal to the difference between the City's total contribution for the fiscal year in question and the City's calculated proportionate share of the District's actual costs for performance of the sanitation services identified in Section 4.1 of this Agreement for the same fiscal year.

4.2.4.6. At the District's request and not more than annually, the City agrees it may consider, but is under no obligation to agree to, alterations, additions, or deletions impacting the scope of services and/or hourly rates defined in Section 4.1 and **Exhibit F** changes in the scope of sanitation services, provided, however, that any such alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both Parties in accordance with Article XXII.

ARTICLE V. DOWNTOWN SPECIAL EVENT PERMITTING PROGRAM

5.1. **Purpose and District Responsibilities.** In accordance with Chapter 791 of the Texas Government Code and Section 375.092(i) of the Texas Local Government Code, the City and the District agree that to expedite service delivery for the issuance of Special Event permits, the District shall be responsible for coordinating and administering permitting for Special Events either wholly or partially located within the Service Area with the exception that final permit approval and issuance shall only be provided by the City, with all rights of termination and/or rejection reserved by the City as provided by applicable City Regulations. Nothing in this Section limits the authority of the City to enforce all City Regulations within the Service Area or grants authority to the District to provide services other than those expressly permitted in this Section.

5.1.1. **Program Administration.** With respect to the program's administration, the District shall be responsible for the following:

5.1.1.1. Serving as the primary point of contact for Special Event applicants and permit holders;

5.1.1.2. Accepting and reviewing Special Event permit applications, associated site plans, and other required documentation for compliance with City Regulations on forms provided by the City;

5.1.1.3. Answering applicant questions about the application, site plan review and permitting processes;

- 5.1.1.4. Providing the applicant with the City fee schedule, place of payment and payment deadline schedule, and an estimated amount of costs for services provided for the issuance of the Special Event permits;
- 5.1.1.5. Creation of case files for each Special Event and electronic upload of all required documentation associated with the application, review and permitting processes associated with the case to the City's permitting management system;
- 5.1.1.6. Notifying and coordinating with the appropriate City departments and applicable outside agencies for review of application materials to ensure compliance with applicable City Regulations;
- 5.1.1.7. Forwarding the complete application to the designated City representative for final permit approval and issuance by the City, with all rights of termination and/or rejection reserved by the City as provided by applicable City Regulations;
- 5.1.1.8. Notifying the applicant in writing of the City's approval, denial or conditional approval of the permit request. If the request is approved or conditionally approved, the City shall issue the permit which shall be delivered to the applicant by the District.
- 5.1.1.9. Where applicable, attending City Council meetings to provide information about the Special Event and associated permit request.
- 5.1.1.10. Coordinating with appropriate City departments for inspections required in accordance with City Regulations, including during its set-up, during the event itself and following its breakdown.
- 5.1.2. **Fees Associated with the Special Event.** The City shall not issue any Special Event permit until required fees have been paid in full in accordance with City Regulations. Under no circumstances shall the District charge fees in excess of City approved fees as adopted by City Council for that same year.
- 5.1.3. **Records.** The District shall enter into the City's permitting management system each application, all required documentation, and record City department reviews and inspection results in said system.
- 5.1.4. **Online Application.** The District shall implement and maintain services which allow for the submittal of an online Special Event permit application.
- 5.2. **City Responsibilities.** As consideration for the District provided services associated with downtown Special Event permitting, the City agrees to the following:

- 5.2.1. **Cooperation and Assistance.** The City shall cooperate with and provide assistance to the District, and specifically, the City shall provide: (i) the City adopted fee schedule and required application forms applicable to Special Event permitting; (ii) access to its permitting management system for use by the District in case creation, application review, and inspection tracking services associated with Special Event permitting; (iii) technical support to the District in support of its use of the City's permitting management system, as may be periodically required; (iv) assistance in preparing, posting and presenting items to City Council, should such items require City Council approval as a prerequisite to Special Event permit issuance; and (v) final review and issuance authority for each Special Event permit submitted for consideration by the District.
- 5.2.2. **Contribution for Services.** The City agrees to pay the District an annual flat fee of \$6,500.00 which covers the District's fixed costs and the processing of and securing up to ten Special Event permits per year. Permits secured by the District during a contract year in excess of 10 shall be paid at a rate of \$650.00 per excess permit. The City shall pay the District the annual flat fee with the first payment due within thirty (30) days of the Effective Date of this Agreement, and each subsequent payment due on October 15th of each year during the Term of this Agreement and subject to City receipt of the Annual Report due on or about every October following the Effective Date of this Agreement. Should the permits secured by the District during the contract year exceed ten, the City shall pay the District the additional amount owed for the secured excess permit(s) for the previous year at the time that the annual payment for the forthcoming year is due, subject, however, to City's receipt of an invoice identifying the additional amount owed and proof of excess permit(s) issued.

ARTICLE VI. WAYFINDING KIOSK CONTENT MANAGEMENT

- 6.1. **Program Purpose and District Responsibilities.** The District shall serve as the lead entity responsible for content management on existing and future Wayfinding Kiosks located within the Downtown Content Management Area. The purpose of this content is to create an awareness of destinations and promote those areas thereby creating a safer and more user friendly environment that will enhance the visitor's experience and encourage more pedestrian and/or bicycle traffic while also providing the opportunity to reinforce the community identity and promote tourism. With respect to Wayfinding Kiosk content management, the District shall be responsible for:
- 6.1.1. **Provision, installation, and replacement of content materials.** Content materials shall be installed and replaced periodically by the District to keep information current and accurate and in good, clean, orderly and attractive condition, or as necessary to ensure public safety at all times.
- 6.1.2. **Minor maintenance for the Wayfinding Kiosks.** Minor maintenance shall be performed by the District and includes but is not limited to, as needed replacement of content materials and removal of graffiti.

- 6.1.3. **Design Standards.** The District shall be responsible for the development of content material design standards, such as weight of paper and dimensions of total content area.
- 6.1.4. **Sponsorship Materials.** The District shall be responsible for securing funding for privately sponsored materials for the purpose of supporting pride in the community, beautifying the downtown area, and promoting community celebrations, downtown events, and general promotions. The District shall have the right to sell and place such materials on said kiosks in accordance with the following restrictions:
- 6.1.4.1. Privately sponsored materials shall appear on no more than three of the four content panels on any single Wayfinding Kiosk so that the remaining panel continues to serve as a sign, map or marker that guides the traveling public to key civic, cultural, visitor and recreational destinations;
- 6.1.4.2. Other sponsorship logos may be placed on the sign, but the sponsorship shall be limited to no more than 20 percent of the sign provided, however, the content shall not otherwise promote commercial ventures, be for political purposes or contain language or depictions that may disparage the City; and
- 6.1.4.3. Such materials shall comply with other applicable City Regulations and be replaced by the District at least annually or as necessary to comply with Subsection 6.1.1.
- 6.1.5. **Wayfinding Materials.** The District shall ensure that at least one panel per Wayfinding Kiosk be reserved for wayfinding content material such as a sign, map or marker for the purpose of guiding the traveling public to key civic, cultural, visitor and recreational destinations. The District shall periodically update wayfinding content material so as to ensure compliance with Subsection 6.1.1. The District shall ensure that Wayfinding content and material used to identify sub-districts within or otherwise brand the Service Area is consistent with the branding initiative launched by the District in 2015 and that sub-district boundaries and names conform to those identified and attached hereto in **Exhibit G**. The City shall reimburse the District for the cost of producing the wayfinding content materials. Such replacement and reimbursement shall be provided on a task order basis, following the procedures outlined in Article XII of this Agreement.
- 6.1.6. **City Sponsored Events and Materials.** Upon City request, the District shall ensure Wayfinding Kiosk content panels are made available for promotion of City sponsored events or informational campaigns at no cost to the City, with the exception that the City shall be responsible for either (i) providing the content materials; or (ii) reimbursing the District for the cost of producing and installing the materials with such reimbursement provided on a task order basis, following the procedures outlined in Article XII of this Agreement. This availability shall only be guaranteed with a minimum four weeks' notice from the City.

- 6.2. **City Responsibilities.** With respect to maintenance of the Wayfinding Kiosks and associated content management, the City shall be responsible for the following:
- 6.2.1. **Hardware and Training.** The City shall ensure the Wayfinding Kiosk hardware is in working order and provide training to the District on the protocol guidelines to place content materials on the Wayfinding Kiosks.
 - 6.2.2. **Major Maintenance.** The City shall be responsible for major maintenance of Wayfinding Kiosk infrastructure. If a Wayfinding Kiosk is damaged beyond capabilities of the District, the City shall take the appropriate measures to remove and/or replace the Wayfinding Kiosk. Replacement of Wayfinding Kiosks shall be contingent on funding availability.
 - 6.2.3. **City Sponsored Events and Materials.** With respect to the promotion of City sponsored events or informational campaigns at the request of the City, the City shall be responsible for providing notice and content materials or reimbursement for the production of such materials in accordance with Subsection 6.1.6 of this Agreement. The City's request shall be limited to 60 days per request and shall use up to 50% of available space at the time of installation.
 - 6.2.4. **Authority to Remove or Require to be Removed.** The City shall retain the authority to remove Wayfinding Kiosk content materials as deemed necessary by the City in order to maintain a safe condition or a Wayfinding Kiosk content panel free of ripping, tearing and other damage; if the City must remove a Wayfinding Kiosk content material in order to maintain a safe condition, the District shall be responsible for all cost of removal. If the City requires the District to remove, alter, change, adapt or conform its Wayfinding Kiosk content material because of changes in the grade of the Public Right-of-Way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, District shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If the City requires the District to remove, alter, change, adapt or conform its Wayfinding Kiosk content materials to enable any other entity or person, except the City to use, or to use with greater convenience, the Public Right-of-Way, District shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse the District for any loss and expense which will be cause by or arise out of such removal, alteration, change, adaptation or conformance of District's Wayfinding Kiosk content materials; provided, however, the City shall not be responsible nor liable for such reimbursement.
 - 6.2.5. **Cancellation.** Should the City at any time or for any reason decide that the Public Right-of-Way onto which the Wayfinding Kiosks are encroaching its need for public use, the City may upon 30 calendar days written notice, cancel the District's right to use of the Wayfinding Kiosks at no cost to the City and may take possession of the Public Right-of-Way. All rights of the District in the Downtown Content Management Area as it relates to Wayfinding Kiosk content materials shall then be terminated. In addition, if, for a period

of 3 months, District shall cease to use or occupy the property for the purposes contemplated in this Section, or if the District defaults in any of its obligations under this Section and fails to correct such defaults within 15 calendar days after written notice to do so, the City may cancel the District's right to use of the Wayfinding Kiosks and take possession. Upon cancellation or termination of this Agreement for whatever reason, the encroaching Wayfinding Kiosk content materials shall become the property of the City and shall, at the option of the City, be removed by the District without cost to the City.

- 6.2.6. **Fees Waived.** As consideration for the Wayfinding Kiosk content management services provided by the District, the City shall not charge the District rental or other use fees for the use of its Wayfinding Kiosk content panels.

ARTICLE VII. DOWNTOWN STREET BANNER CONTENT MANAGEMENT

- 7.1. **Program Purpose and District Responsibilities.** The District shall serve as the lead entity responsible for content management of existing and future Street Banners located within the Downtown Content Management Area. The purpose of this content is to enhance the streetscape and promote activities, events, programs or destinations relating to a municipal purpose and benefit and specifically showcasing the downtown street scene while adding visibility to downtown events and activities. With respect to Street Banner content management, the District shall be responsible for:

- 7.1.1. **Provision, installation and replacement of content materials.** Street Banner displays shall be installed and replaced by the District to keep information current and accurate and in good, clean, orderly and attractive condition, or as necessary to ensure public safety at all times.

- 7.1.2. **Minor maintenance for Street Banners.** Minor maintenance shall be performed by the District and includes but is not limited to, as needed replacement of Street Banner displays and removal of graffiti.

- 7.1.3. **Design Standards.** The District shall be responsible for the development of display design standards, such as weight of Street Banner display material and dimensions of total content area, in accordance with applicable City Regulations.

- 7.1.4. **Location Requirements.** The District shall be responsible for ensuring all Street Banner displays comply with applicable City Regulations, including but not limited to the following:

7.1.4.1. Street Banner displays shall not obstruct pedestrian or vehicular traffic;

7.1.4.2. For displays located adjacent to vehicular traffic, a minimum clearance of 15 feet from the bottom of the display shall be required; and

7.1.4.3. For displays located adjacent to pedestrian traffic, a minimum clearance of 11 feet from the bottom of the display shall be required;

7.1.5. **Sponsorship Materials.** The District shall be responsible for securing funding for privately sponsored materials for the purpose of supporting pride in the community, beautifying the downtown area, and promoting community celebrations, downtown events, and general promotions. The District shall have the right to sell and place such materials on Street Banner displays in accordance with the following restrictions:

7.1.5.1. Sponsorship logos may be placed on the Street Banner display, but the sponsorship logo shall be limited to no more than 20 percent of the display area provided however, the content shall not otherwise promote commercial ventures, be for political purposes, or contain language or depictions that may disparage the City; and

7.1.5.2. Such materials shall comply with other applicable City Regulations and be replaced by the District at least annually or as necessary to comply with Subsection 7.1.1.

7.1.6. **Wayfinding and Branding Content.** The District shall ensure that Street Banner displays used to identify sub-districts within or otherwise brand the Service Area are consistent with the branding initiative launched by the District in 2015 and that sub-district boundaries and names conform to those identified and attached hereto in **Exhibit G**.

7.1.7. **City Sponsored Events and Materials.** Upon City request, the District shall ensure requested Street Banners are made available for the promotion of City sponsored events or informational campaigns at no cost to the City, with the exception that the City shall be responsible for either (i) providing the content materials; or (ii) reimbursing the District for the cost of producing and installing the materials with such reimbursement provided on a task order basis, following the procedures outlined in Article XII of this Agreement. This availability shall only be guaranteed with a minimum four weeks' notice from the City. The City's request shall be limited to 60 days per request and shall use up to 50% of available space at the time of installation.

7.1.8. **Removal of Street Banners upon Agreement Expiration.** Immediately after the expiration of this Agreement, the District shall either remove all Street Banners under this program or seek a special privilege, license, franchise or other permit, as applicable for the Street Banners.

7.2. **City Responsibilities.** With respect to maintenance of the Street Banners and associated content management, the City shall be responsible for the following:

- 7.2.1. **Hardware and Training.** The City shall ensure the Street Banner hardware is in working order and provide training to the District on the protocol guidelines to install Street Banner displays, upon District request.
- 7.2.2. **Major Maintenance.** Upon District request, the City shall be responsible for major maintenance of Street Banner infrastructure, including removal and/or replacement the Street Banner infrastructure and hardware. The City, however, shall not be responsible for the cost of replacing infrastructure or hardware damaged by District installation, replacement or maintenance of the Street Banner displays; under such circumstances, the District shall pay the City's cost for the installation, removal and/or replacement of such infrastructure and/or hardware.
- 7.2.3. **City Sponsored Events and Materials.** With respect to the promotion of City sponsored events or informational campaigns at the request of the City, the City shall be responsible for providing notice and content materials or reimbursement for the production of such materials in accordance with Subsection 7.1.7 of this Agreement.
- 7.2.4. **Authority to Remove or Require to be Removed.** The City shall retain the authority to remove Street Banner displays as deemed necessary by the City in order to maintain a safe condition or a Street Banner display free of ripping, tearing and other damage; if the City must remove a Street Banner display in order to maintain a safe condition, the District shall be responsible for all cost of removal. If the City requires the District to remove, alter, change, adapt or conform its Street Banner displays because of changes in the grade of the Public Right-of-Way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, District shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If the City requires the District to remove, alter, change, adapt or conform its Street Banner displays to enable any other entity or person, except the City to use, or to use with greater convenience, the Public Right-of-Way, District shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse the District for any loss and expense which will be cause by or arise out of such removal, alteration, change, adaptation or conformance of District's Street Banner displays; provided, however, the City shall not be responsible nor liable for such reimbursement.
- 7.2.5. **Cancellation.** Should the City at any time or for any reason decide that the Public Right-of-Way onto which the Street Banner displays are encroaching its need for public use, the City may upon 30 calendar days written notice, cancel the District's right to use of the Street Banners at no cost to the City and may take possession of the Public Right-of-Way. All rights of the District in the Downtown Content Management Area as it relates to Street Banner displays shall then be terminated. In addition, if, for a period of 3 months, District shall cease to use or occupy the property for the purposes contemplated in this Section, or if the District defaults in any of its obligations under this Section and fails to correct such defaults within 15 calendar days after written notice to do so, the City may cancel the

District's right to use of the Street Banners and take possession. Upon cancellation or termination of this Agreement for whatever reason, the encroaching Street Banner displays shall become the property of the City and shall, at the option of the City, be removed by the District without cost to the City.

- 7.2.6. **Fees Waived.** As consideration for the Street Banner content management services provided by the District, the City shall not charge the District rental or other use fees for the use of its Street Banners located within the Downtown Content Management Area.

ARTICLE VIII. BIKE RACK ACCESSIBILITY PROGRAM

- 8.1. **Purpose and District Responsibilities.** To facilitate bicycling as a viable means of transportation, the City and the District wish to work together to improve the availability and convenience of bicycle parking within the Service Area, thereby easing security concerns and improving bicycle trip safety and convenience. In accordance with applicable City Regulations, the City authorizes the District to install and maintain Bike Racks on the Public Right-of-Way and specifically, the District shall be responsible for the following:
- 8.1.1. **Program Administration.** The District shall develop the policies, forms and budget for the program and shall be responsible for program administration. Such administration shall include name development and program marketing and outreach.
- 8.1.2. **Provision, Installation and Replacement of Bike Racks.** Bike Racks for the program shall be provided, installed and replaced by the District to keep Bike Racks in good, clean, orderly and attractive condition, or as necessary to ensure public safety at all times. The District shall be responsible for the purchase of the Bike Racks, at the District's own expense.
- 8.1.3. **Minor and Major Maintenance for Bike Racks.** All Bike Rack maintenance shall be performed by the District, at its own expense, and includes but is not limited to, as needed replacement of Bike Racks and removal of graffiti.
- 8.1.4. **Construction and Design Standards.** The District shall be responsible for the development of Bike Rack construction and design standards in accordance with applicable City Regulations. Bike Racks shall be of the standard "inverted-U" shape and shall be made of steel tubing resistant to cutting, rusting, bending or deformation. Alternative Bike Rack styles may be approved by the City on a case-by-case basis in accordance with City Regulations.
- 8.1.5. **Location Requirements.** The District shall be responsible for ensuring all Bike Rack locations comply with applicable City Regulations, including all setback requirements. Bike Racks on the sidewalk or parkway portion of the Public Right-of-Way shall not require prior City approval, however, installation of on-street Bike Racks located within the Public-Right of Way shall require prior City approval.

- 8.1.6. **Liability and Bike Rack Ownership.** The District shall ensure that all applicants under the Bike Rack program, if any, sign an agreement that releases the City and the District from any claims related to the applicant's participation in the Bike Rack Program and that the applicant acknowledges that the installed Bike Racks will remain the property of the District and that the applicant does not have any exclusive rights to the use of the Bike Racks. Notwithstanding anything to the contrary, the District acknowledges that all Bike Racks installed under the Bike Rack program shall remain the property of the District.
 - 8.1.7. **Fee for Participation.** The District may charge applicants under the Bike Rack program, if any, a fee for program participation in accordance with its program policies.
 - 8.1.8. **Inventory.** The District shall maintain an accurate inventory of the locations of all Bike Racks installed under the Bike Rack Program and provide such inventory to the City at least annually with its Annual Report.
 - 8.1.9. **Removal of Bike Racks after Agreement Expiration.** Immediately after the expiration of this Agreement, the District shall either remove all Bike Racks under the Bike Rack program or seek a special privilege, license, franchise, or other permit, as applicable, for the Bike Racks.
- 8.2. **City Responsibilities.** With respect to the Bike Rack program, the City shall be responsible for the following:
- 8.2.1. **Locational Support.** The City shall meet with the District at least annually to assist in identifying locations, to include on-street locations, within the Service Area that may benefit from the installation of Bike Racks and meet all applicable City Regulations.
 - 8.2.2. **Marketing.** The City shall support the District in its marketing of the Bike Rack program through notice on applicable pages of the City's website.
 - 8.2.3. **Authority to Remove or Require to be Removed.** The City shall retain the authority to remove Bike Racks as deemed necessary by the City in order to maintain a safe condition or a Bike Rack free of graffiti or other damage; if the City must remove a Bike Rack in order to maintain a safe condition, the District shall be responsible for all cost of removal. If the City requires the District to remove, alter, change, adapt or conform its Bike Racks because of changes in the grade of the Public Right-of-Way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, District shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If the City requires the District to remove, alter, change, adapt or conform its Bike Racks to enable any other entity or person, except the City to use, or to use with greater convenience, the Public Right-of-Way, District shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse the

District for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of District's Bike Racks; provided, however, the City shall not be responsible nor liable for such reimbursement.

- 8.2.4. **Cancellation.** Should the City at any time or for any reason decide that the Public Right-of-Way onto which the Bike Racks are encroaching its need for public use, the City may upon 30 calendar days written notice, cancel the District's right to use of the Public Right-of-Way for the Bike Rack program at no cost to the City and may take possession of the Public Right-of-Way. All rights of the District in the Service Area as it relates to Bike Racks shall then be terminated. In addition, if the District defaults in any of its obligations under this Section and fails to correct such defaults within 15 calendar days after written notice to do so, the City may cancel the District's right to use of the Public Right-of-Way for Bike Racks and take possession. Upon cancellation or termination of this Agreement for whatever reason, the encroaching Bike Racks shall become the property of the City and shall, at the option of the City, be removed by the District without cost to the City.
- 8.2.5. **Fees Waived.** As consideration for the Bike Rack program services provided by the District, the City shall not charge the District rental or other use fees for the use of its Public Right-of-way for Bike Racks located within the Service Area.

ARTICLE IX. COMMERCIAL FAÇADE IMPROVEMENT PROGRAM

- 9.1. **Program Purpose.** The purpose of the Commercial Façade Improvement Program (the "Program") is to provide match funding to business and/or property owners to encourage improvement and rehabilitation of the exterior of existing privately owned buildings consistent with applicable design standards in the Program Area to create a positive visual impact, stimulate private investment, and complement other public and private investment efforts.
- 9.2. **Program Incentives.** All incentives under this Program shall be performance based and provided to the applicant in the form of a rebate following proof of project completion in accordance with this Section. The incentive categories available under this Program include the Commercial Façade Improvement Grant and the Signature Rooftop Signage Improvement Grant, as described in below.
- 9.3. **Commercial Façade Improvement Incentive.** The purpose of this incentive is to encourage improvements to building Façades in the Program Area.
- 9.3.1. **Qualifying Criteria.** Program participation is limited to Façade improvements located in the Program Area. The following are excluded from participation: (i) properties which received an award under this Program within the previous eight years; (ii) national franchises and chain stores; (iii) large commercial buildings in excess of 80,000 square feet; (iv) banks; (v) government owned and occupied buildings; (vi) residential buildings with less than five units; and (vii) projects that have already begun or completed renovations/construction.

- 9.3.2. **Eligible Improvements.** Eligible project improvements include the repair, replacement or new applications of awnings, windows, doors, lighting, paint, landscaping, tile or other decorative material and signs; installation of outdoor dining areas; and other exterior improvements to the Façade that address code compliance issues such as signage violations and the removal security bars.
- 9.3.3. **Design Parameters.** Design parameters include: (i) respecting original features of the building, including the use of color and suitable materials; (ii) limiting additional signage by incorporating it into the building’s design; and (iii) using suitable landscaping that will aid in the preservation of community scale and character.
- 9.3.4. **Incentive Levels.** For projects designated eligible to receive a Commercial Façade Improvement incentive, the following incentive levels exist:
- 9.3.4.1. **Critical Corridor Façade Improvement Incentive.** For projects designated eligible to receive a Commercial Façade Improvement incentive and located in a Critical Corridor, the applicant shall be awarded two-thirds of the eligible improvement costs up to a \$25,000 maximum.
- 9.3.4.2. **Historic Landmark Façade Improvement Incentive.** For projects designated eligible to receive a Commercial Façade Improvement incentive and designated a historic landmark or contributing as defined by applicable City Regulations, the applicant shall be awarded two-thirds the eligible improvement costs up to a \$25,000 maximum
- 9.3.4.3. **Small Business Façade Improvement Incentive.** For projects designated eligible to receive a Commercial Façade Improvement incentive with street level and street-facing small business tenants, the applicant shall be awarded two-thirds of the eligible improvement costs up to a \$25,000 maximum.
- 9.3.4.4. **Standard Commercial Façade Improvement Incentive.** For projects designated eligible to receive a Commercial Façade Improvement incentive but not eligible under Subsections 9.3.4.1, 2 or 3, the applicant shall be awarded one-half of the eligible improvement costs up to a \$25,000 maximum.
- 9.4. **Signature Rooftop Signage Incentive.** The purpose of this incentive is to encourage installation and/or rehabilitation of historic and/or artistic signage in the Program Area.
- 9.4.1. **Qualifying Criteria.** Program participation is limited to signature rooftop signage improvements located in the Program Area. For the purposes of this Agreement, “signature rooftop signage” means historic and/or artistic signage that is not used for brand advertising or any other revenue generating purpose, including: rooftop signs, blade signs and prominent parapet lighting. Rooftop art, so long as it is lit at night, may be reviewed on a case-by-case basis for eligibility. The following are excluded from participation: (i)

properties which received an award under this Program within the previous eight years; and (ii) projects that have already begun or completed renovations/construction.

9.4.2. **Signature Rooftop Signage Incentive.** For projects designated eligible to receive a Signature Rooftop Signage incentive, the applicant shall be awarded one-half of eligible design and/or construction costs up to a \$25,000 maximum.

9.5. **District Responsibilities.** The District shall administer the Program on behalf of the City and in accordance with the Program policy. To that end, the District will provide the staff and administrative services that are necessary to manage the Program and management, financial and program monitoring systems for the administration of the Program.

9.5.1. **Program Administration.** Acting as Program administrator, the District shall be responsible for the following:

9.5.1.1. **Marketing and Outreach.** In partnership with the City, the District shall actively engage in marketing and outreach efforts in order to generate participation from the business sector within the Program Area.

9.5.1.2. **Program Procedures.** The District shall be responsible for development of Program procedures to further detail the application, selection, award, and monitoring processes. The District shall provide the City with a copy of such procedures, as amended.

9.5.1.3. **Application Process.** The District shall be responsible for receiving applications and shall determine the incentive category for which the project qualifies. Before an application is approved, applicants shall provide basic information about the property (e.g. size, location, building use, current tenants, and ownership). Applicants shall also indicate types of improvements they'd like to make, goals they'd like the improvements to achieve, and how much they are able to spend on the project.

9.5.1.4. **Selection Process and Qualifying Projects.** The District shall select Qualifying Projects by selecting those projects anticipated to provide the greatest public benefit to the Program Area as determined by the Program committee which shall be selected and managed by the District and include at least two City representatives and when appropriate, the City's Historic Preservation Officer. The District reserves the right to prioritize projects and refuse applicants. To select and prioritize the projects, the District and its committee may consider the following factors: (i) located within a Critical Corridor; (ii) complements City's public improvement strategies; (iii) coincides with City revitalization activities; (iii) community need/demand for change; (iv) creative value of the project; (v) current condition of the building/façade; (vi) neighborhood code compliance issues; (vii) conformity to applicable design guidelines; (viii) promotes historic preservation;

(ix) improves accessibility; (x) addresses energy efficiency; and (xi) project feasibility.

9.5.1.5. **Grant Agreements.** Upon selection as a qualifying project by the District and regardless of the funding source, the District shall have the authority to execute a grant agreement with the applicant for the qualifying project. Such agreements shall be promptly provided by the District to the City following execution.

9.5.1.6. **Documentation Process.** The District shall work with the applicant to assemble all required documents and forms. Business tenants must obtain written approval from the property owner stating that the owner does not object to the business tenant completing the proposed improvements to the property.

9.5.1.7. **Award Process.** Once the project is complete, the applicant shall submit: (i) evidence of payment related to eligible expenses; (ii) copies of all permits pulled and where applicable, a certificate of completion or occupancy; (ii) federal tax identification number or social security number; and (iii) color photos of the finished project. If all obligations under the program procedures have been met, the District shall issue the performance-based incentive within 30 days receipt of required documentation as detailed in this Subsection.

9.5.2. **Fees Charged.** The District shall not charge applicants a fee, including but not limited to an application fee, for participation in the Program.

9.5.3. **Fiscal Management and Reporting.** The District shall provide fiscal management services for the Program, to include fund account management and award disbursement. In addition to the Annual Report, the District shall provide a quarterly Program budget update and fund balance to the City, including all funding sources. With its Annual Report, the District shall provide a report to the City of the status of all Qualifying Projects and associated grant agreements.

9.6. **City Responsibilities.** The City shall be responsible for the following in connection with the Program:

9.6.1. **Program Funding.** Beginning calendar year 2021 and subject to funding availability, the City shall contribute \$100,000.00 annually to the Commercial Façade Improvement Program. The contribution shall be made upon receipt of the annual invoice from the District due January of each year following the Effective Date of this Agreement. The District may set aside up to 2.5 percent of this contribution for Program administration costs.

9.6.2. **Committee Participation.** The City agrees to provide a minimum of two representatives and when appropriate, the Historic Preservation Officer, to participate on the committee in the qualifying project selection process.

9.6.3. **Additional Support.** The City agrees to work with the District to provide marketing and outreach support and to provide qualified assistance in the application and selection processes.

9.7. **Disposition of Remaining Funds.** In the event this Agreement expires or is terminated in accordance with applicable sections of this Agreement, any remaining balance of funds attributed to the City's contribution shall be returned to the City; provided, however, any approved qualifying project to be funded by the City's contribution that had been approved prior to Agreement expiration or termination, but not yet reimbursed at the time of expiration or termination, shall be reimbursed to the applicant upon successful completion of all requirements as per the conditions of the grant agreement with that portion of City funding treated as encumbered and not subject to return.

ARTICLE X. BUSINESS RECRUITMENT, RETENTION AND EXPANSION PROGRAM PARTNERSHIP

10.1. **Program Purpose.** It is the intent of the City and the District to establish a Business Recruitment, Retention and Expansion Program (the "BRRE Program") for the benefit of the Service Area. The four goals of the BRRE Program include: (i) retain existing businesses; (ii) facilitate growth and expansion; (iii) enhance the business climate; and (iv) strengthen community partnerships with businesses. These goals will be achieved through a visitation and surveying of businesses, business appreciation and recognition opportunities, providing direct value to businesses, supporting growing and at-risk businesses, and contributing to a positive and supportive business climate. To this end, the Parties agree to work together to provide deliverables including, but not limited to the following:

10.1.1. **Database Creation and Target Development.** Establish and maintain a database of existing businesses in the Service Area, to include critical information about the business such as contact information, location, industry sector, and number of employees. The Parties may identify business targets to focus BRRE Program efforts; such targets may include living-wage businesses, medium-sized businesses, businesses in certain Service Area sub-districts, or businesses in industries targeted for expansion or attraction, among others.

10.1.2. **Relationship Building and Direct Information Gathering.** Develop a visitation plan to assist in relationship-building and understanding the business's plans for expansion or relocation. Plan will include training to conduct successful on-site visits, survey/interview questionnaire development, and follow-up.

10.1.3. **Problem Solving and Opportunity Identification.** Review data collected via site visits, survey/interview questionnaires, and follow-up to identify critical needs and opportunities. The Parties agree to work together to facilitate problem resolution for businesses by

identifying resources internal and external to the Service Area and any associated costs to help businesses address problems and grow.

- 10.1.4. **Continuous Tracking.** Develop periodic survey instruments to maintain understanding of current and projected needs of existing businesses, including business concerns and trends as they relate to areas such as transportation, workforce development, regulatory issues and public safety.
- 10.1.5. **BRRE Program Maintenance and Communication.** The Parties agree to work together to maintain the BRE Program throughout the Term of this Agreement, including periodic re-evaluation of goals and communication and celebration of successes.
- 10.1.6. **Work Plan Development.** Within six months of the Effective Date of this Agreement, the Parties agree to develop a work plan to further identify goals and objectives of the BRRE Program and Program organization, deliverables and timelines. The work plan may be amended from time to time by mutual agreement from the Parties to reflect learning and alignment with current and future needs.
- 10.2. **Other Community Partnerships.** The Parties recognize and agree that each may work with other partnering organizations to achieve the goal of the BRRE Program and to provide the resources to the existing Service Area businesses to facilitate their growth and expansion. However, neither Party shall assume any responsibility or liability to any third party or other partnering organization as a result of such agreements. The Parties' responsibilities and liabilities are limited to those provided herein. Additionally each party is responsible for the costs related to its participation in this BRE Program as outlined in this Agreement.
- 10.3. **No Limitation.** The Parties further recognize and agree that the partnership identified in this Article shall have no negative impact on the District's ability to initiate and operate a BRRE program of its own accord for the benefit of the Service Area, nor shall it have any impact on the City's ability to provide assistance and support to the District initiated program if it so chooses.

ARTICLE XI. PUBLIC OUTREACH AND MARKETING

- 11.1. **Public Outreach Services.** Upon request by the City, the District may perform public outreach with various stakeholders in the Service Area to improve City communication with other public entities and the private sector as it relates to City capital improvement construction projects affecting the Service Area. Such activities may include but are not limited to sharing information through the District's mailing and/or email list, door-to-door outreach, public meetings, social media and e-newsletter promotion. Such services shall be provided on a task order basis, following the procedures outlined in Article XII of this Agreement.
- 11.2. **Marketing.** To enhance commercial activity and attract commercial redevelopment in downtown El Paso, the District agrees that any marketing or publicity it undertakes for the purpose of

promoting events and activities located in the Service Area shall conform to the broad-based marketing campaign and program launched by the District in 2015 (Exhibit G).

- 11.3. **Advertising.** Upon request by the City, the District may advertise City events and messaging through the District’s social media and communication channels. Such services shall be provided on a task order basis, following the procedures outlined in Article XII of this Agreement.

ARTICLE XII. PROCEDURES FOR SERVICES PROVIDED ON A TASK ORDER BASIS

- 12.1. **Task Authorization.** The District may, upon the referral of a task by the City, perform the services specified in the task authorization form as further described in Section 12.2 below. The District shall not undertake any project for the City or perform any services for the City at the request of any City official or employee without a signed Task Authorization Form. Work performed by the District on matters that are not referred to the District will be considered unauthorized and non-compensable.
- 12.2. **Task Authorization Form.** The task authorization form shall be prepared by the District upon written request from the City and shall contain: (i) the name and a description of the matter for which the District’s services are retained; (ii) an explanation of the scope of work; (iii) the compensation the City will pay the District for the services requested; and (iv) the name of the designated City employee who will be working with the District and to whom the District will be reporting. The Task Authorization Form is effective upon its execution.
- 12.3. **Invoicing and Payment.** The District shall bill the City not more often than monthly through written invoices following the completion of requested services. All expenses identified on the invoice shall be properly receipted and documented. The City shall not be billed for “miscellaneous” or “other expenses.” Unless otherwise specifically addressed in this Agreement, any expense or expenditure that the City is requested to reimburse shall be billed at the District’s actual out-of-pocket cost. Direct reimbursement is limited to actual charge billed to the District without any additional profit or overhead charge by the District beyond the normal unit cost or hourly rate set forth in the executed task authorization form. The District shall demonstrate good judgment when incurring costs that are considered a direct reimbursable expense while conducting business for the City. All direct reimbursable expenses shall be reasonable and prudent and must be included in the applicable task authorization form.
 - 12.3.1. Each invoice shall contain a brief summary indicating, at a minimum, the total amount authorized for that task, the current invoiced amount and the amount billed to date for that task. In addition to this summary, each invoice shall provide a progress report, which shall describe, at a minimum, the progress of the task to date.
 - 12.3.2. The City agrees to pay invoices for all services performed as soon as reasonably possible but not later than 30 days from receipt. Upon dispute, however, the City may, upon notice to the District, withhold payment to the District for the amount in dispute only, until such

time as the exact amount of the disputed amount due to the District is determined. The total amount paid to the District shall not exceed District's fee proposal per task.

ARTICLE XIII. ANNUAL REPORT AND OTHER REPORTING REQUIREMENTS

- 13.1. **Annual Report.** In addition to any other reporting requirements identified in this Agreement, on a yearly basis, being on or about every month of October following the Effective Date of this Agreement, the District shall submit an Annual Report to the City detailing its performance of activities under this Agreement and its performance related to key performance indicators identified in **Exhibit A** attached and incorporated herein. This report shall also identify positive outcomes and areas needing improvement. Annual payment due to the District by the City, subsequent to the initial payment, as identified in Articles IV and V shall be contingent on receipt of the Annual Report.
- 13.2. **Annual Sanitation Services Final Accounting.** In accordance with Article IV, the District shall provide to the City a final accounting of the actual costs associated with providing the sanitation services set forth in Section 4.1 to be delivered within 90 days following the end of any given District fiscal year. The final accounting is for the purpose of City verification that it paid no more than the City's proportionate share, in accordance with Section 4.2 of this Agreement.
- 13.3. **Quarterly Commercial Façade Improvement Program Reporting.** In accordance with Article IV, the District shall provide a quarterly Commercial Façade Improvement Program budget update and fund balance to the City, including all funding sources.

ARTICLE XIV. RESERVED

- 14.1. **RESERVED**

ARTICLE XIV. INSURANCE AND INDEMNIFICATION

- 15.1. **Insurance Required.** The District shall purchase and maintain in effect throughout the Term of this Agreement the insurance requirements contained in this Article, unless specifically exempted in writing by the City.
- 15.2. **Insurance Requirements.** The District shall comply with all of the following insurance requirements through the Term of this Agreement. Any gaps in insurance coverage are considered a breach of the requirements of this Agreement.
 - 15.2.1. **Commercial Liability Insurance.** The District shall procure Commercial Liability Insurance in the minimum amounts of \$1,000,000 per occurrence for bodily injury or wrongful death and \$1,000,000 for property damage. The District shall ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the District

is performing services near any railroad or streetcar track, then the District shall provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence.

- 15.2.2. **Workers Compensation Insurance.** If required by law, the District shall procure workers compensation insurance as required by law.
- 15.2.3. **Flood Insurance.** With respect to any real property owned by the District, the District shall maintain, during the term of the Agreement, and provide the City on an annual basis, proof of flood insurance in the amount of flood insurance coverage required by the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, which is the lesser of the following: (i) the maximum amount of National Flood Insurance (NFPI) coverage available for the particular property type; or (ii) the insurable value of the Project.
- 15.2.4. **Automobile/Motor Vehicle Liability Insurance.** The District shall procure automobile liability insurance for any of its motor vehicles in the minimum amounts of \$1,000,000 for bodily injury per occurrence and \$1,000,000 property damage per occurrence.
- 15.2.5. **Additional Insured.** With the exception of the workers compensation insurance, the District shall add the City as an additional insured to the all insurance policies required under this Agreement.
- 15.2.6. **Notification of Changes/Cancellations.** The District shall procure all insurances with an endorsement that requires reasonable notification to the additional insured within ten days of any changes or cancellations in coverage.
- 15.2.7. **Deductibles.** The District shall obtain prior written approval of the City for any insurance policy deductibles in excess of \$50,000.
- 15.2.8. **Issuer of Policy.** The District shall procure all insurances from businesses authorized to do business in Texas. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Upon reasonable notice of at least ten days, the City reserves the right to obtain a copy of or inspect the District's insurance policies. The City may give the District 45 days' notice in the event the City determines any of the District's insurance policies should be cancelled or rejected including where an issuer of an insurance policy is substandard, with the City's right to demand cancellation or rejection of a policy to be in the City's sole discretion.
- 15.2.9. **Additional Endorsements.** Each policy must contain: (i) an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees; and (ii) an endorsement that such policy is primary insurance to any other insurance available to the additional

insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

- 15.3. **Proof of Insurance.** The District shall provide the City proof of compliance with all insurance requirements in this Agreement. Proof provided by the District to the City must be in the form of a certificate of insurance accompanied by all endorsements. Following a written request by the City, provided at least ten days in advance, the District shall provide the City a complete copy of all insurance policies required under this Agreement.
- 15.4. **Indemnification. TO THE EXTENT ALLOWED BY LAW AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE DISTRICT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE RELATED TO THE SUBRECIPIENTS AND/OR THE SUBRECIPIENT'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS CONTRACT.**
- 15.5. **Release.** To the extent allowed by law, the District releases the City and the City's officers, officials, and employees from all claims of property damage, property loss, injury, or death sustained by the District while performing any activities related to this Agreement.
- 15.6. **Damage to City Property.** The District shall pay the costs of repairing any damages to City property (including public right of way) caused by the District or the District's contractors, subcontractors, or agents. The District shall make payment for any damages within 30 calendar days of receiving an invoice from the City.

ARTICLE XVI. GOVERNMENTAL FUNCTION AND IMMUNITY

- 16.1. **Governmental Function.** The City and the District 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.
- 16.2. **Sovereign Immunity.** The City and the District 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.

ARTICLE XVII. LIABILITY AND RISK ALLOCATION

- 17.1. **Liability.** This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either Party by law.
- 17.2. **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 attorney's fees – as 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.
- 17.3. **Intentional Risk Allocation.** The City and the District 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.
- 17.4. **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.
- 17.5. **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 City Regulations occurred as a result of that Party's actions, except as may be specifically provided by law.

ARTICLE XVIII. RECORDS

- 18.1. **Right to Review.** Following reasonable notice to the District, the City reserves the right to conduct, at its own expense, examinations, during regular business hours, the books and records related to this Agreement including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the District's services hereunder. The City also reserves the right to perform any additional audits relating to District's services, provided that such audits related to those services performed by District under this Agreement. In the event the City chooses to conduct an audit to verify the final accounting referenced in Subsection 4.1.5, the District shall furnish all backup documentation required including, but not limited to actual receipts, payment documentation, general ledger reports, payroll schedules, and depreciation schedules.

El Paso, Texas 79950-1890
Phone: (915) 212-0094

The City of El Paso, Texas
Attn: City Engineer
P.O. Box 1890
El Paso, Texas 79950-1890
Phone: (915) 212-0065

If to the District: El Paso Downtown Management District
Attn: President, Board of Directors
CC: Executive Director
201 E. Main, Suite 107
El Paso, Texas 79901
Phone: (915) 400-2294

- 19.2. **Invoices.** Invoices required under this Agreement are to be submitted by the District to the City at the following address:

The City of El Paso, Texas
Attn: Director, Economic & Int'l Development
P.O. Box 1890
El Paso, Texas 79950-1890
Phone: (915) 212-0094

And to such other place as designated by written notice to the District by the City.

- 19.3. **Change of Address.** A Party may change its address for notices and or invoices under this Agreement by giving written notice to the other Party, specifying the Party's new address. Each Party agrees to keep the other informed at all times of its current address.

ARTICLE XX. CONTRACTUAL RELATIONSHIP

- 20.1. **No Agency.** The Parties to this Agreement are governmental entities that are entering into this Agreement 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 be limited to landlord-tenant, employer-employee, or principal-agent. No provision of this Agreement that imposes an obligation or restriction on either Party not permitted by applicable law shall be enforceable.
- 20.2. **No Authority.** The District 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 District to any obligation other than the obligations set forth in this Agreement.

ARTICLE XXI. TERMINATION AND RECAPTURE

21.1. **Termination.** For purposes of this Agreement, termination means the expiration of the Term as provided by Section 2.2. In addition, this Agreement may be terminated as provided herein.

21.1.1. **Termination by Mutual Consent.** The Parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

21.1.2. **Termination for Cause or Default.** Upon written notice, which must be provided in accordance with Article XIX of the Agreement, either Party shall have the right to terminate this Agreement for cause, in whole or in part, if either Party: (i) defaults and (ii) fails to cure such default.

21.1.2.1. **Events of Default.** Each of the following shall constitute an “Event of Default”:
(i) failure of one Party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other Party; (ii) the dissolution or termination of District’s existence; or (iii) if any written warranty, representation or statement made or furnished to either Party by the other Party under this Agreement, or any document(s) related hereto furnished to either Party by the other Party, is/are knowingly false or misleading in any material and substantial respect, either now or at the time made or furnished.

21.1.2.2. **Notice of Default and Opportunity to Cure.** In the event of a default by one Party, the other Party shall not terminate unless the other Party being terminated is granted: (i) written notice of intent to terminate enumerating the failures for which the termination is being sought; (ii) a minimum of 30 consecutive calendar days to cure such failures; and (iii) an opportunity for consultation with the terminating Party prior to such termination. If, however, there are no reasonable means to cure the default, Party shall be apprised of that as well as the facts leading to that conclusion in the notice of default and said notice of default may serve as notice of termination. Following written notice of default, the terminating Party shall not be obligated to make payments to the other Party as required under this Agreement until such time as the event of default is cured.

21.1.2.3. **Failure to Cure.** In the event the defaulting Party commits a breach of its obligations under this Agreement and fails to cure that breach within the 30-day cure period (or extended period), the terminating Party may terminate this Agreement in whole or in part by providing a written notice of termination, which shall include the reason for the termination and the effective date of such termination.

21.1.2.4. **Right of Recapture.** If the City terminates this Agreement for cause, then the City shall have the right to recapture all funds disbursed under this Agreement and District shall repay all funds disbursed under this Agreement within 60 calendar days from the effective date of notice of termination.

21.1.2.5. **Other Remedies.** The City shall have the right to seek any remedy in law or equity to which it may be entitled in addition to termination and repayment of funds, if District defaults under this Agreement.

21.1.3. **Termination without Cause.** This Agreement may be terminated by either Party for any reason, or for no reason whatsoever upon 120 calendar days' prior written notice to the other Party.

21.1.4. **Termination by Law.** If any applicable state or federal law or regulation is enacted or promulgated which prohibits the performance of the duties herein, or, if any law interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

21.2. **Close-Out.** Regardless of how this Agreement is terminated, District will effect an orderly transfer to City, at no additional cost to the City, copies of all completed or partially completed documents, records, or reports produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by the City, or shall otherwise be retained by District in accordance with Article XVIII.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1. **Amendment Required.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both Parties.

22.2. **Disposal Location.** Notwithstanding the above, the Disposal Location may be amended, as evidenced by approval of the City Manager or designee. In the event an amendment to the Disposal Location will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 22.1, above. District may rely on the determination of the City Manager or designee, whether a change in the Disposal Location would result in a material change to the Agreement.

22.3. **Automatic Incorporation of Laws.** Changes in local, state and federal rules, regulations or laws applicable to the Parties' services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part as of the effective date of the rule, regulation or law.

ARTICLE XXIII. EL PASO STREETCAR OPERATIONAL RIGHT-OF-WAY SAFETY

23.1. **El Paso Streetcar Operational Right-of-Way Safety.** The District shall comply with all applicable City Regulations when performing any activity authorized under this Agreement within the El Paso Streetcar Operational Right-of-Way, or within the vicinity of the El Paso Streetcar. “Activity” shall include any construction, demolition, event, moving event, special event, excavation, use of right of way, cleaning, painting, repairing, or installation of traffic devices, regardless of whether any of the previous requires approval of the City under the City Code; or any activity under the City Code or other regulatory entity. “El Paso Streetcar Operational Right-of-Way” shall mean the horizontal and vertical boundaries of the streetcar track system, encompassing the overhead power contact wire and all associated infrastructure.

ARTICLE XXIV. MISCELLANEOUS

- 24.1. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- 24.2. **Assignment.** Developer shall not sell, transfer, assign, or convey, in any way, rights associated with this Agreement to anyone.
- 24.3. **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.
- 24.4. **Computation of Time.** If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m., Mountain Standard Time, of the next day which is not a Saturday, Sunday or federal, state or legal holiday.
- 24.5. **Confidentiality.** The confidentiality of records related to this Agreement will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code.
- 24.6. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and such counterparts, when taken together, shall constitute one instrument.
- 24.7. **Current Revenues.** Pursuant to Section 791.001(d)(3), Texas Government Code, each Party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying Party.
- 24.8. **Discrimination Prohibited.** The District 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.

- 24.9. **Employment of Undocumented Workers.** During the term of this Agreement, District shall not knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), District shall repay the amount of the payments received by District from the City as of the date of such violation not later than 120 days after the date District is notified by City of a violation of this section, plus interest from the date the payment(s) was paid to District, at the rate of 7 percent per annum. The interest will accrue from the date the payment(s) were paid to District until the date the payment(s) are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover the payment(s) subject to repayment under this section. District is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom District contracts.
- 24.10. **Force Majeure.** If the performance of any obligations hereunder is delayed by reason of war, terrorism or the imminent threat thereof, insurrection, civil commotion, riots, labor disputes, strikes, lockouts, embargoes, hurricanes or named windstorms, unusual weather, fire, casualty, disruption to local, national or international transport services or exceptional or abnormal lack of availability of construction materials/supplies, epidemics, quarantine, any other public health restrictions or advisories, unavoidable casualties or other causes beyond the reasonable control of a Party hereto, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.
- 24.11. **Headings.** The article, section or paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 24.12. **Legal Authority.** Each person executing this Agreement on behalf of each Party, represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the City and/or District, respectively and to bind the City and/or District to all the terms, conditions, provisions, and obligations of this Agreement.
- 24.13. **No Joint Venture.** The Parties agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the services performed under this Agreement.
- 24.14. **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 or the provision itself, or a waiver of any right under this Agreement.
- 24.15. **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.

- 24.16. **Severability.** If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable provision, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.
- 24.17. **Survival of Agreement.** A Party shall remain obligated to the other Party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.
- 24.18. **Warranty of Capacity to Perform.** The District and the City represent and warrant that each Party has or will retain the person or persons with appropriate expertise and knowledge to fulfill their respective obligations under this Agreement.

ARTICLE XXIV. ENTIRE AGREEMENT

- 24.1. **No Contradictions.** 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.
- 24.2. **Incorporation of Exhibits.** Each exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

Exhibit A: Annual Report Submittal Package

Exhibit B: Critical Corridors

Exhibit C: Downtown Content Management Area

Exhibit D: Commercial Façade Improvement Program Area

Exhibit E: Service Area

Exhibit F: RESERVED

Exhibit G: Downtown Subdistricts

(signatures begin on the following page)

IN WITNESS WHEREOF, the Parties have executed this Agreement on this _____ day of _____, 2020.

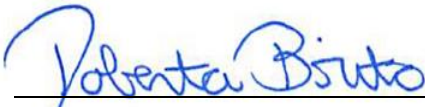
CITY OF EL PASO, TEXAS

Dee Margo
Mayor

ATTEST:

Laura Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



for: Jessica Herrera, Director
Economic and International Development

(signatures continue on following page)

**EL PASO DOWNTOWN MANAGEMENT
DISTRICT:**

Michael D. McQueen, President
Board of Directors

ATTEST:

Joe Gudenrath
Executive Director

**Exhibit A:
Annual Report Submittal Package**

In accordance with Article XIII, the District agrees that, in addition to any other reporting requirements identified in this Agreement, on a yearly basis, being on or about every month of October following the Effective Date of this Agreement, the District shall submit an Annual Report to the City detailing its performance of activities under this Agreement and its performance related to key performance indicators identified in this **Exhibit A**, in addition to the identification of positive outcomes and areas needing improvement. Annual payment, subsequent to the initial payment, due to the District by the City as identified in Articles IV and V shall be contingent on receipt of a complete Annual Report. The Annual Report shall report out on the following key performance indicators:

I. Sanitation Services

- a. Total illegal dumping cases addressed
- b. Total first floor graffiti cases abated
- c. Percent of graffiti cases abated within 48 hours
- d. Average number of public assets power washed per month
- e. Total post City-event cleanup
- f. Linear feet of public ROW canvassed for litter abatement
- g. Linear feet of sidewalk power washed
- h. Linear feet of sidewalk canvassed for gum removal
- i. Downtown property owner, business, resident, visitor satisfaction with downtown cleanliness
- j. Other KPIs as identified by the District

II. Downtown Special Event Permitting Program

- a. Number of Permits Issued by Event Type
- b. Total Attendance at Special Events
- c. Other KPIs as identified by the District

III. Wayfinding Kiosk and Street Banner Content Management Programs

- a. Program annual revenue
- b. Summary of program campaigns
- c. Other KPIs as identified by the District

IV. Bike Rack Accessibility Program

- a. Number of Bike Racks Installed by Type
- b. Location of Bike Racks
- c. Other KPIs as identified by the District

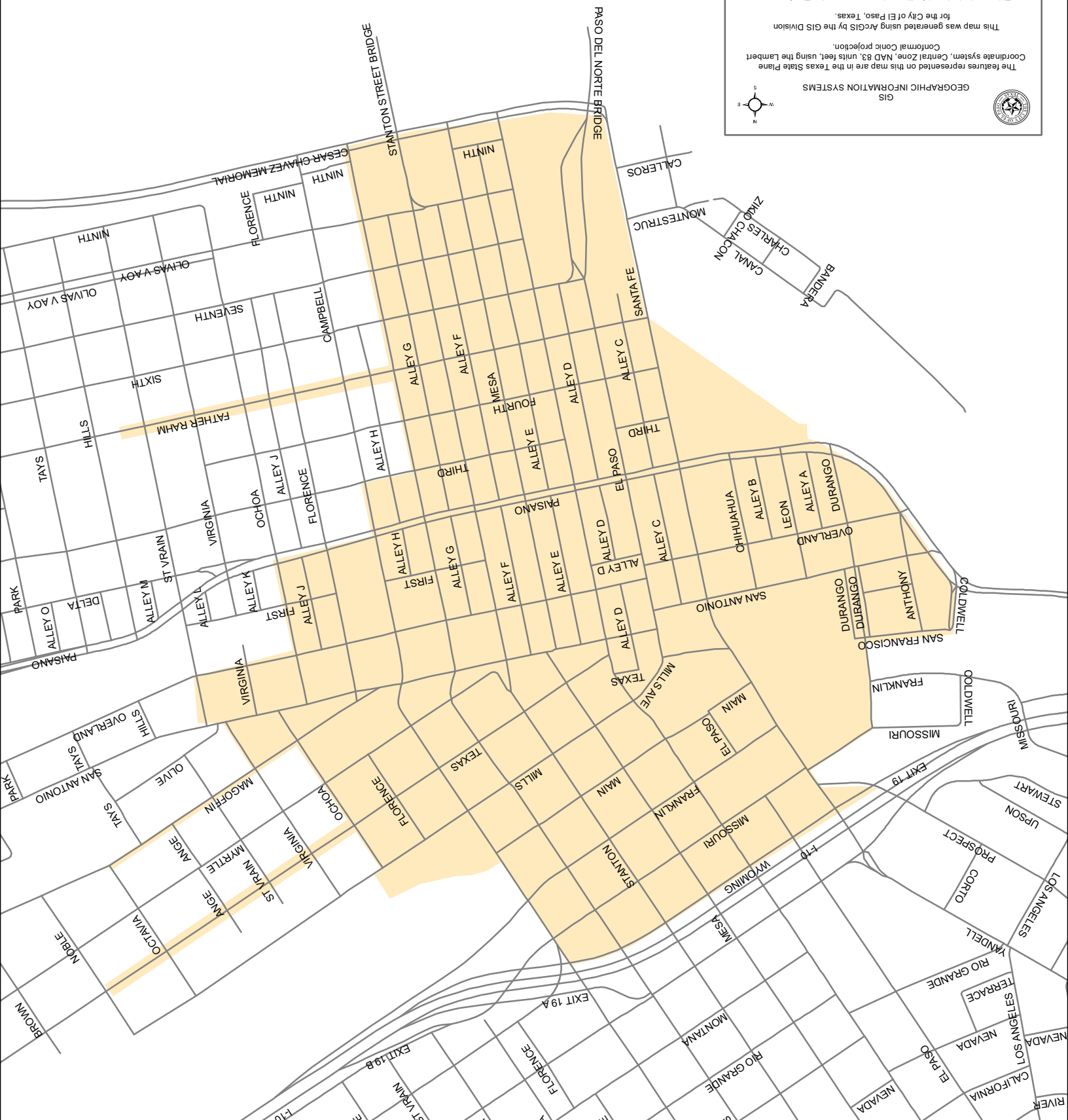
V. Commercial Façade Improvement Program

- a. Number of grant agreements executed
- b. Total public investment
- c. Total private investment
- d. Return on Investment for completed projects
- e. Other KPIs as identified by the District


**Exhibit B:
Critical Corridors**

**Exhibit C:
Downtown Content Management Area**

Exhibit C: Downtown Content Management Area



GIS
GEOGRAPHIC INFORMATION SYSTEMS



The features represented on this map are in the Texas State Plane Coordinate system, Central Zone, NAD 83, units feet, using the Lambert Conformal Conic projection.

This map was generated using ArcGIS by the GIS Division for the City of El Paso, Texas.

This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data.

The GIS Division makes no claim to its accuracy or completeness.

September 2020


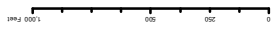
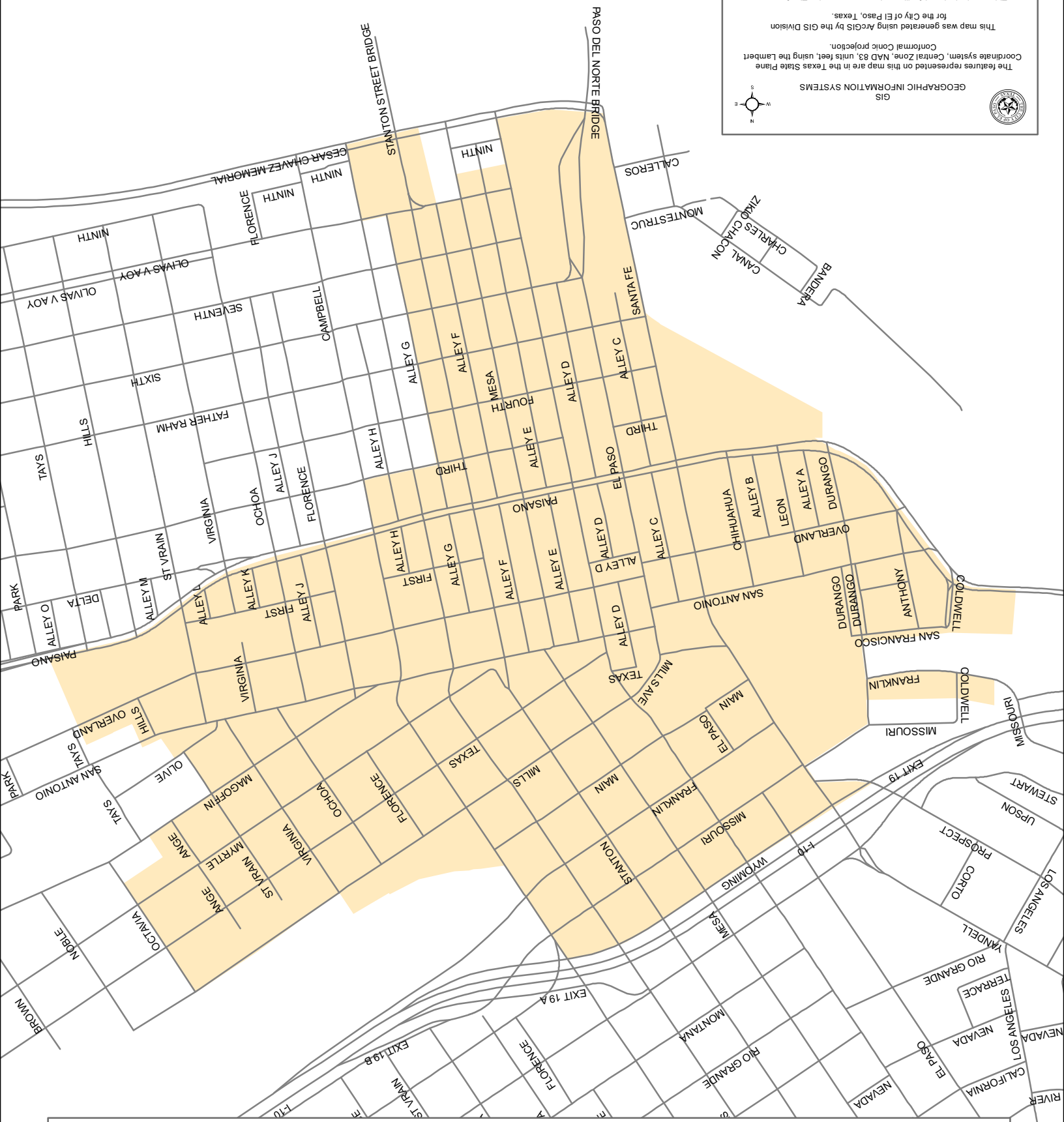


Exhibit D:
Commercial Façade Improvement Program Area

Exhibit D: Commercial Façade Improvement Program Area



GIS
GEOGRAPHIC INFORMATION SYSTEMS

Scale: 0, 100, 200, 300, 400 Feet

September 2020

The GIS Division makes no claim to its accuracy or completeness. The GIS Division makes no claim to its accuracy or completeness. This map is designed for illustrative purposes only. The features depicted here are approximate and more site-specific studies may be required to draw accurate conclusions. Enlargements of this map to scales greater than its original can induce errors and may lead to misinterpretations of the data.

This map was generated using ArcGIS by the GIS Division for the City of El Paso, Texas.

Coordinate system, Central Zone, NAD 83, units feet, using the Lambert Conformal Conic projection.

**Exhibit E:
Service Area**

**Exhibit F:
RESERVED**

**Exhibit G:
Downtown Subdistricts**

