

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Environmental Services  
**AGENDA DATE:** December 16, 2008  
**CONTACT PERSON/PHONE:** Ellen A. Smyth, P.E., (915) 621-6719  
**DISTRICT (S) AFFECTED:** 8

**SUBJECT:**

Agreement with the Downtown Management District to clean sidewalks, alleys and storefronts and graffiti removal in the DMD District.

**BACKGROUND / DISCUSSION**

The proposed agreement with the Downtown Management District is for three years beginning 2008 through 2011 for an annual amount of \$60,000. The DMD will clean sidewalks, alleys and storefronts and graffiti removal. The City will empty sidewalk trash containers in the DMD area for an annual payment from the DMD of \$90,000 in 2008 and \$180,000 in each 2009 and 2010, with a possible adjusted payment amount for 2010 and 2011.

**PRIOR COUNCIL ACTION:**

1998 was the first three-year interlocal agreement; Renewed in 2001 and again in 2004.

**AMOUNT AND SOURCE OF FUNDING:**

Department ID: 34010289/505200/403140

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) Josette Flores

**FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

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

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

CITY CLERK DEPT.

08 DEC -4 AM 11:59

## 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 agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "DMD") for the DMD to clean sidewalks, alleys and storefronts and graffiti removal, among other tasks for an annual \$60,000.00 payment from the City from 2008 through 2011, and for the City to empty sidewalk trash containers in the DMD area for an annual payment from the DMD of \$90,000.00 in 2008 and \$180,000.00 in each of 2009 and 2010, with a possible adjusted payment amount for 2010 and 2011.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**CITY OF EL PASO**

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


**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

**STATE OF TEXAS**

**INTERLOCAL AGREEMENT**

**COUNTY OF EL PASO**

THIS AGREEMENT is by and between the City of El Paso, Texas, a Texas Home Rule City, hereinafter "City" and the El Paso Downtown Management District, a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375, hereinafter "DMD", entered into on this \_\_\_\_ day of \_\_\_\_, 2008.

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

**WHEREAS**, in accordance with Section 375.001(c), the DMD desires to supplement certain City services for increased health, safety and welfare of citizens to promote the accessibility and consumer traffic in downtown El Paso; and,

**WHEREAS**, the Board of Directors of the DMD and the El Paso City Council finds that a program of regular sidewalk, alley and storefront cleaning and graffiti removal, along with other agreed upon activities, would be in the public interest and serve a public benefit to the citizens of El Paso by making downtown El Paso attractive and serviceable to all.

**NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:**

For and on behalf of the general public good and the covenants and promises hereinafter set forth, the City and the DMD agree to the following:

**I. Responsibilities of the DMD**

A. The DMD shall regularly clean the sidewalks, alleys and storefronts located within the DMD geographical area in downtown El Paso, Texas. The term "regularly" shall mean, for purposes of this Agreement, five days per work week with the exceptions 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 DMD.

B. The DMD shall continue to provide other supplemental services within the DMD geographical area in downtown El Paso, Texas, as defined and allowed within Chapter 375 of the Local Government Code, and as deemed fitting and appropriate by the Board, within the scope of various programs and resources allowed therein. Examples of the type of supplemental

services which could be selected by the Board include, but are not limited to, the collection and removal of cardboard; removal of graffiti; painting of street furniture owned by the City including street light poles; cleaning of historical markers; power washing of sidewalks and alleys; assistance in the cleaning of specially impacted areas before and after specific events; and the promotion of cleanliness and code compliance to the businesses and property owners within the DMD.

C. The DMD shall own, maintain and operate the necessary equipment to perform the services pursuant to the Scope of Work herein.

D. The DMD shall supervise and train personnel in the operation and maintenance of the equipment. In this regard, it is understood that the DMD will be using El Paso County adult probationers to work with the equipment and perform the labor under this Agreement. The DMD shall be solely responsible in regard to any matter or claim of whatsoever nature as to the supervision, training and responsibility for these persons. Without waiving this responsibility in any manner, it is understood that the DMD may contract with responsible third parties in order to execute the sanitation plan.

E. At all times relevant to this agreement and project, the DMD shall be considered an independent contractor, and shall never be considered an employee, agent or servant of the City.

F. With the prior approval of the City's Deputy City Manager for Development and Infrastructure, as to the type, design and placement, it is hereby agreed that the DMD has the authority to purchase and install certain fixtures; for example, light fixtures, benches, trash containers, etc., for use within the District. The District shall pay for these fixtures from its own funds. The City shall not pay for any such fixtures.

G. In further consideration of this Agreement, the DMD shall purchase and maintain in effect throughout the term of this Agreement, a policy of general liability insurance, from an insurance company authorized to do business in the State of Texas and as approved by the City, in coverage amounts of not less than \$250,000 per person for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. Said insurance policy or policies shall name the City as an additional insured. The DMD shall deliver to the City, prior to beginning any work, a true and accurate copy of the certificate of insurance for the above required insurance policy. Said certificate shall state on its face, at a minimum, the policy limits, that the City is an additional insured under the policy and that no change or cancellation of the policy shall be effective unless and until thirty (30) days prior written notice has been provided to the City.

## **II. Responsibilities of the CITY**

A. It is understood that the City of El Paso will provide the following City Environmental Department services, which are as follows: Within the DMD, the City shall empty sidewalk receptacles, as provided by the City in an adequate number not less than current amount provided, a minimum of twice a day, seven (7) days a week, or more often as necessary to maintain a clean and presentable downtown area. Special events may result in additional need for City sanitation services. The City agrees to bear the responsibility for trash collection for all sidewalk containers and to resolve internally any jurisdictional or inter-departmental disputes within various City entities and departments. The City further agrees to identify location(s) on City-owned property on which the City will provide the appropriate size and number of dumpsters or other containers as needed for DMD crews to perform its supplemental services. The City will be responsible for emptying and disposing of the waste in those containers and

dumpsters.

B. The City of El Paso will assist the DMD in a partnership effort to engage other governmental entities, officed within the boundaries of the DMD, to financially support the cleanup costs of the DMD.

C. The City of El Paso will work with the DMD in exploring cost cutting programs such as conversion of sidewalk trash receptacle replacement with utilization of an automated trash receptacle program to increase efficiency and reduce costs.

D. The City of El Paso agrees to provide documents verifying its actual cost expended and projected cost estimations of the amount to collect trash as called for in this agreement. Such documents will be verifiable and in accordance with generally accepted principles of accounting. The City further agrees to provide such documentation, and all backup documents and formulae to the DMD and its accountants for review and examination, and to further provide the appropriate staff to answer questions relating to such information.

E. The awarding and performance of any payment and either party's service is dependent upon the availability of funding to the parties. In the event that funds relating to this Agreement do not become available, such as by City Council not appropriating the funds, the City shall have no obligation to pay or perform any services related herein to the DMD for the City's fiscal year during which time such funding is not available or appropriated, or such as the DMD Board not appropriating the funds, the DMD shall have no obligation to pay or perform any services related herein to the City for the DMD's fiscal year during which time such funding is not available or appropriated. Should the parties experience a funding unavailability, the parties may mutually determine if the Agreement will be terminated or whether an amendment of the parties' obligations is possible. Termination or cancellation shall be as provided herein, and

there shall be no penalty charges incurred by the terminating party for such termination or cancellation.

### **III. CONSIDERATION**

A. In consideration of the DMD providing the supplemental services as set forth herein, the City shall pay to the DMD within thirty (30) days of the execution of this Agreement by both parties the sum of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00). Thereafter, on October 1, 2009, the City shall pay to DMD, SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00), a payment October 1, 2010 of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) and a payment October 1, 2011 of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00).

B. In consideration for the City's sanitation services, as set forth herein, the DMD shall pay to the City an amount based on what the City purports to be its cost for the City's sanitation services within the DMD area as follows. Currently, the City purports that amount to be \$360,000 which amount includes the \$60,000 payment to the DMD for providing supplemental services as provided in paragraph I. A above.

1. The DMD shall pay to the City the sum of \$90,000.00 upon execution of this Agreement by both parties.

2. Thereafter, any and all payments are subject to the ability of the DMD to adopt a new, higher yearly assessment fee in accordance with Chapter 375, Local Government Code, and in an amount sufficient to cover additional supplemental contributions to the City. If the DMD is unable to pass a higher assessment fee, this Agreement shall terminate as set forth in Section IV.

3. Should a new and sufficient assessment amount be adopted by the DMD so that the DMD is able to remain fiscally sound, the DMD agrees to make another yearly payment of

\$180,000.00 on October 1, 2009; and another yearly payment of \$180,000.00 on October 1, 2010. It is agreed by the parties that this amount represents 50% of what the City purports to be their cost of providing trash services, excluding residential trash services, within the DMD. A final payment, as accrued from September 1, 2010 through the length of this Agreement, will be paid or refunded to DMD, on October 1, 2011, such amount of payment or refund to be based on the verifiable and specific accounting provided by the City in accordance with generally accepted principles of accounting and in accordance with its verifiable cost structure to be provided as agreed herein.

#### **IV. TERM AND TERMINATION**

The term of this Agreement shall be for four years from the date of passage by City Council, and acceptance by the DMD, until August 31, 2012 unless sooner terminated by either party for any reason upon one hundred twenty (120) days prior written notice to the other party.

#### **V. GENERAL PROVISIONS**

A. The DMD shall maintain appropriate records in accordance with generally accepted accounting principles and shall make such records available to the City during reasonable business hours at any time the City or its designee shall request access to same. All records shall be kept by the DMD throughout the term of this Agreement and for a period in accordance with Chapter 375 of the Texas Local Government Code.

B. This Agreement shall be interpreted and enforced in accordance with the law of the State of Texas. Venue for any matter related to this Agreement shall be in the courts of El Paso County, Texas.

C. In the performance of this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.



D. This Agreement and the obligations hereunder shall not be assigned, transferred or encumbered in any manner without the written consent of the City and the DMD.

E. Should any provision of this Agreement be found, by a court of competent jurisdiction to be invalid or illegal, such finding shall not affect any other remaining term or provision of the agreement.

F. Notices to affect this Agreement shall be considered sufficient if sent by mail, certified, return receipt requested to the following addresses: (Note: notice addresses may be changed upon two days prior written notice to the party to be bound)

CITY:

City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, TX 79901

COPY TO:

Ellen A. Smyth, P.E., Director  
Environmental Services Department  
7969 San Paulo  
El Paso, TX 79907

DMD:

El Paso Downtown Management District  
Attn: Executive Director  
201 E. Main, Suite 1710  
El Paso, TX 79901

G. Should the City, as part of a new plan for provision of services, decide to modify the services under this Agreement, or any other City service as traditionally and currently provided within the DMD, it will provide Notice of the new plan to the DMD in sufficient time to allow the DMD to provide Notice of Termination as called for in this Agreement. Should the modification of any City services be required in exigent circumstances, notwithstanding the

termination notice provided for in this Agreement, the City shall provide Notice of the new service plan with as much time as it reasonably can under the stated exigent circumstance(s). The City will also provide in such Notice the anticipated length of the modification to City services covered by the exigency.

H. This Agreement represents the entire agreement between the parties and supersedes any other verbal or written understandings or agreements of the parties as to the matters the subject hereof.

I. DMD and the City represent and warrant that they have or will retain the person or persons with appropriate expertise and knowledge to fulfill their respective obligations under this Agreement.

J. The DMD affirmatively obligates itself that it will not discriminate according to race, gender, religion or national origin in the performance of any obligation it has under this Agreement.

K. This Agreement shall not be modified, amended or changed except upon a written instrument signed by the parties.

*(signatures to follow on next page)*

TO WITNESS WHICH THE FOLLOWING SIGNATURES:

**CITY OF EL PASO**

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

ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

**AGREED AND ACCEPTED:**

DOWNTOWN MANAGEMENT DISTRICT

ATTEST:

\_\_\_\_\_  
William B. Hooten  
President

\_\_\_\_\_  
Marc Bernat  
Secretary

DATE:

\_\_\_\_\_