201 E. Main, Ste. 107
El Paso, Texas 79901
915-400-2294
downtownelpaso.com

DOWNTOWN MANAGEMENT DISTRICT
EL PASO

R06-20-A-014

RE: FY2020 EPA Brownfields Assessment Coalition Grant Proposal

The El Paso Downtown Management District, and its Coalition Members the City of El Paso and El Paso County are pleased to submit this proposal for FY2020 Brownfields Assessment Coalition Grant funding**.** Below we provide the information requested.

1. Applicant Identification:
El Paso Downtown Management District
201 E. Main Street, Suite 107, El Paso TX 79901

2. Funding Requested:
(a) Assessment Grant Type: Coalition
(b) Federal Funds Requested:
(i) Requested Amount: $600,000
(ii) Site-specific Assessment Grant Waiver: N*ot applicable.*
(c) Contamination: $450,000 Hazardous Substances and $150,000 Petroleum

3. Location:
(a) City: El Paso
(b) County: El Paso County
(c) State: Texas

4. Property Information for Site-Specific Proposals: *Not applicable.*

5. Contacts:
(a) Project Director:
Name: Joe Gudenrath, Executive Director, El Paso Downtown Management District
Phone: 915-240-3116 | Email: jgudenrath@elpasodmd.org
Mailing Address: 201 E. Main Street, Suite 107, El Paso TX 79901
(b) Chief Executive/Highest Ranking Elected Official: *same as Project Director*

6. Population: 800,647 (El Paso County); 683,577 (City of El Paso)

7. Other Factors Checklist:

Other Factors	Page #
Community population is 10,000 or less.	1, 2*
Applicant is, or will assist, a federally recognized Indian tribe or United States territory.	-
The priority brownfield site(s) is impacted by mine-scarred land.	-
The priority site(s) is adjacent to a body of water (i.e., the border of the priority site(s) is contiguous or partially contiguous to the body of water or would be contiguous or partially contiguous with a body of water but for a street, road, or other public thoroughfare separating them).	-
The priority brownfield site(s) is in a federally designated flood plain.	-
The redevelopment of the priority site(s) will facilitate renewable energy from wind, solar, or geothermal energy; or any energy efficiency improvement projects.	3
30% or more of the overall project budget will be spent on eligible reuse planning activities for priority brownfield site(s) within the target area.	8

**The DMD Area has 5,000 residents. Additionally, the grant will assist small towns in rural areas throughout El Paso County, including San Elizario (9,000 residents) and the Village of Vinton (2,000 residents).*

8. Letter from the State or Tribal Environmental Authority: A letter of acknowledgement from the Texas Commission on Environmental Quality is attached.

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 22, 2019

Mr. Joe Gudenrath
El Paso Downtown Management District
201 E Main Street, Suite 107
El Paso, Texas 79901

Re: El Paso Downtown Management District's Proposal for a U.S. Environmental Protection Agency FY20 Brownfields Assessment Grant

Dear Mr. Gudenrath:

The Texas Commission on Environmental Quality (TCEQ) is pleased to offer this letter of support for the El Paso Downtown Management District's proposal to the U.S. Environmental Protection Agency for a FY20 Brownfields Assessment Grant. The TCEQ believes that the grant will significantly benefit the El Paso Downtown Management District as well as the surrounding area by enhancing the local economy, increasing the tax base and improving the environment.

The TCEQ looks forward to working with the El Paso Downtown Management District in coalition with the City of El Paso, and El Paso County on its Brownfields initiative. You may contact me at 512-239-2252 or kristian.livingston@tceq.texas.gov if you have any questions or would like additional information.

Sincerely,

K.M. Lom

Kristy Mauricio Livingston
Brownfields Program Manager
Remediation Division

KL/cw

cc: Ms. Mary Kemp, EPA Region 6, Brownfields Section, kemp.mary@epa.gov
Ms. Denise Williams, EPA Region 6, Brownfields Section, williams.denise@epa.gov

NARRATIVE PROPOSAL

1. PROJECT AREA DESCRIPTION & PLANS FOR REVITALIZATION:

1.a.i. Background & Description of Target Area: The area along the Rio Grande where the City of El Paso sits today has been occupied for over 10,000 years. Indigenous farmers and New Spanish colonists lived in the area until the land was ceded to the U.S. in the Treaty of Guadalupe Hidalgo (1848). El Paso was incorporated in 1873 and was home to a few hundred people along the official U.S.-Mexico Border. With the arrival of the railroads in the 1880s, the City quickly grew to over 10,000 residents – a mix of the historic Hispanic settlers and Anglo Americans. The intimate economic relationship with Ciudad Juárez, war-time manufacturing, and discovery of oil in the Permian Basin helped further bolster the City throughout the 20th Century. Today, the City is home to 683,577 "El Pasoans". It is the County Seat of El Paso County (pop. 800,647) and the **22nd largest U.S city**. El Paso is part of the El Paso-Juárez-Las Cruses metro area (pop. 2,700,000), the largest binational and bilingual workforce in the western hemisphere.

El Paso's **primary target area**, the **Downtown Management District (DMD),** represents the heart of the City. The DMD is a 384-acre area that stretches from I-10 on the north, to Campbell Street to the east, and the US-Mexico border to the south. It's an historic area that is home to numerous cultural institutions, shopping, entertainment, offices and government facilities, and an international border crossing into Ciudad Juárez. While the community has renovated several historic gems into hotels and office buildings, urban sprawl and disinvestment has resulted in dozens of vacant buildings and surface lots. Although the DMD has enjoyed a strong employment base, opportunities to attract modern residential development have been less successful. Over the past decade, the DMD and the City have accelerated efforts towards realizing their vision of the DMD as the place where El Pasoans can "live, work, play, and connect". In 2014, the Southwest University Park baseball stadium opened in downtown El Paso, on the site of the former City Hall. The following year, Sun Metro re-launched their historic streetcar system. With these (and other) investments, the DMD is poised for an era of rapid revitalization. Despite the growing excitement around reoccupying historic buildings and reclaiming empty lots, hazardous building materials & subsurface impacts continue to make brownfield redevelopments "pencil in the red."

As the lead applicant, the DMD has formed a Coalition with the **City of El Paso** (City) and **El Paso County** (County). While the project will primarily focus on the DMD and other priority brownfields in El Paso, inclusion of the County will ensure engagement with residents in smaller towns and rural areas, such as San Elizario (pop. 9,213) and Vinton Village (pop. 1,721). These areas lack the resources necessary to secure EPA funding on their own. The Coalition will leverage $600,000 of EPA Brownfield Assessment Grant funding with proven strategies to engage El Pasoans in a dynamic process to revitalize priority brownfields that will help address the significant socioeconomic challenges facing the community.

1.a.ii. Description of Priority Brownfield Sites: Given the long history of commercial/industrial development, and large concentration of vacant and underutilized (V/U) properties, there are dozens of potential brownfields throughout the DMD target area. Additionally, given the vast expanse of the City and County, there are hundreds of additional brownfields located within opportunity zones, industrial areas, rail and commercial corridors, and within small towns and villages throughout the El Paso region.

Data Type	Category	DMD Target Area	City of El Paso	El Paso County
General Description	***Population/ Area***	~5,000 residents/0.6 mi^2	~684,000 residents/255 mi^2	801,000 residents/1,013 mi^2
	Legacy Environmental Issues	Dozens of multi-story buildings & empty lots; 24 petroleum; 16 HWGs.	Impacts along commercial/ industrial corridors and opportunity zones.	Subsurface impacts from commercial/agricultural sites in rural areas.
Vacant/ Underutilized (V/U) Land	***# of Parcels/Acres Classified as V/U***	374 Parcels/85 Acres	16,667 Parcels/33,330 Acres	145,196 Parcels/333,000 Acres
	% of Property V/U	55%	35.3%	64.2%
Properties Listed in Env. Databases	***TCEQ***	24Listings/19 Parcels	2003 Listings/908 Parcels	2,217 Listings/1,143 Parcels
	EPA FRS	55 Listings/43 Parcels	3,549 Listings/2,411 Parcels	4,416 Listings/3,162 Parcels
	Totals	79 Listings/49 Parcels	5,552 Listings/2,863 Parcels	6,613 Listings/3,690 Parcels
Brownfields	***# of Potential Sites***	23 Parcels/13 Acres	Further inventory required.	Further inventory required.

TCEQ = Texas Commission on Environmental Quality; FRS = Facility Registration System; HWG = Hazardous Waste Generator; mi^2 = square miles.

In support of this grant application, the Coalition partners completed preliminary brownfield inventory and stakeholder engagement activities to characterize potential brownfield issues (table above) and identify priority target areas and catalyst sites within each of their respective jurisdictions (table below).

	Name/Type	Description	Former/Current Use	Env. Issues	Reuse Plans	Funding Needs
DMD	*Vacant/ underutilized (V/U) historic buildings***	7-Blocks (bounded by San Antonio Ave., Kansas St., Oregon St. & Paisano Dr.).	V/U multi-story historic buildings formerly used as commercial/ industrial businesses.	RBMs, soil/gw and vapor impacts related to historic uses.	Adaptive reuse of structures. Lower = Commercial; Upper = Multi-family/office.	Phase I/II ESAs; RBM Surveys; RAPs; AWP.
DMD	*Numerous empty lots and surface parking areas*	24 Leaking Petroleum Storage Tanks (LPSTs); 16 HWGs; Many more undocumented sites.	Former gas stations and auto-related facilities. Presently empty lots and surface parking areas.	Petro and haz. substances from LPST & former auto facilities.	Suitable for new construction; provide multi-family housing and new businesses.	Phase I/II ESAs; RAPs/ Reuse Plans.
City	*Texas Avenue Corridor East of DMD***	Texas Avenue Corridor between DMD and Piedras Street.	Former auto-related, commercial/industrial. Presently vacant/underutilized.	Petroleum and hazardous substances from historic use.	Prepare sites for TOD that leverage recent transit/infrastructure investments.	Phase I/II ESAs; RBM; RAPs; AWP.
County	*City of San Elizario*	Rural community ~20 miles south of El Paso.	32 Sites in TCEQ/EPA databases. Recently acquired 115-acre farm.	Decaying structures and agro-chemicals.	Repurpose donated farm for community rec & event center.	Phase II ESA; RAP.
County	*Vinton Village*	Rural community ~19 miles NNW of El Paso.	Vacant commercial along Vinton Road. Two salvage yards.	Petroleum & hazardous. Arsenic in gw.	Main Street/Town Center. Attract new business.	Phase I/II ESAs; RAP.

*****Select sites described below. V/U = Vacant/Underutilized. TCEQ = Texas Commission on Environmental Quality; HWG = Hazardous Waste Generator; GW = Groundwater; RBMs = Regulated Building Materials (Asbestos/Lead-Based Paint); RAPs = Remedial Action Plans; ESAs = Environmental Site Assessments; TOD = Transit-Oriented Development; AWP = Area-Wide Plan.***

In November 2019 the DMD conducted windshield surveys of a seven-block area of the DMD & the Texas Avenue Corridor to document existing conditions and verify priority brownfield/redevelopment sites:

- ***DMD***: Of 91 properties surveyed, 76 had structures and 15 were empty lots or surface parking areas. Of the 76 structures, 49% were identified as vacant or underutilized. Potential priority brownfields include:
  - 300 San Antonio Ave.: Vacant 7-story retail/warehouse building. Ideal for adaptive reuse project.
  - 105 Stanton St.: Former JC Penny Building. Acquired by a project partner for redevelopment plan.
  - 217-223 Stanton St.: Three contiguous former retail buildings. Ideal for reuse as retail/restaurant.
- ***Texas Avenue Corridor***: There are a few mostly vacant segments. Potential priority brownfields include:
  - Former Firestone Site: Large, vacant, catalyst site on the NW corner of intersection with Octavia St.
  - Former Vehicle/Equipment Site: Large, vacant, blighted property east of and adjacent to Firestone.
  - Former Warehouse Site: Vacant, 4-story brick building on NW corner of intersection with Noble St.

1.b.i. Reuse Strategy & Alignment with Revitalization Plans: The ***El Paso Downtown 2015 Plan*** ("The Plan") identified the primary revitalization challenges within the DMD, including: historic buildings in disrepair; noticeable vacancy in lower/upper floors; deteriorating sub-standard housing; many vacant lots; and long-term decline in numbers of residents and businesses. The Plan also identified the DMD's many assets, including: rich history with a fabric of mid-20th Century buildings; strong lower-end retail base near border crossing; up to 15,000 Mexicans visit daily for work, shopping & recreation; compact walkable area that supports pedestrian movement; and significant public investment in civic amenities. Following a robust public engagement process, The Plan established revitalization goals, including: attracting a diversity of land uses; providing quality housing; enhanced transit; and creating a vibrant and authentic sense of place. The Plan also introduced eight key revitalization strategies, most notably:

- ***Catalyst Projects****: Creating a series of major private investments that bring significant residential and commercial energy to downtown to kick-start infill development and adaptive reuse of existing buildings;*
- ***Historic/Adaptive Reuse:*** *The wealth of historically and culturally significant buildings downtown provide a basis for reuse and adaptive conversion to address current housing and commercial needs; and*
- ***Infill Development:*** *Numerous underutilized vacant lots and surface parking areas within downtown provide opportunities for infill development both within the DMD and the larger downtown area*[a].

Since the adoption of the Downtown 2015 Plan, the City and its partners have made significant progress toward implementing these strategies and achieving the goals. At the same time, subsequent planning efforts have advanced the DMD's Vision as the place where El Pasoans can *"live, work, play, and connect in Downtown El Paso."* For example, one of the primary goals identified in the ***Active Transportation System El Paso*** (2016) study is to "*connect residents with jobs leading to economic opportunities for the*

[a] City of El Paso. *El Paso Downtown 2015 Plan*.

neighborhood that address social vulnerabilities in El Paso." The report recommended the construction of affordable and market-rate housing in downtown to support existing businesses & cultural institutions. The EPA grant will also support revitalization plans in small towns/rural areas of El Paso County, such as:

- ***San Elizario***: The City's ***Comprehensive Plan*** (2016) identified the primary redevelopment area as the Mission Trail Historical Area and identified the need to "conduct an historic structures assessment" to support adaptive reuse of historic buildings that will preserve and protect the community's character.
- ***Vinton Village***: The ***Imagine Vinton Comprehensive Plan*** (2017) laid the framework to transition the blighted Vinton Road corridor into a vibrant main street/town center. The plan included the need to "identify public/private partners to serve infill development of strategic sites that have a catalytic effect."

The overall strategy for the EPA grant is to focus on catalyst brownfields within each target area that have feasible, near-term opportunities in alignment with these goals and evolving community priorities.

1.b.ii. Outcomes & Benefits of Reuse Strategy: Federally-Designated Opportunity Zones (DOZs): The target areas include and/or are adjacent to the following three DOZs: Census Tract (CT) 19 includes the SE portion of the DMD; CT 105.01 includes the SE portion of San Elizario; and CT 102.20 is adjacent to Vinton. **Economic Benefits**: The DMD anticipates that a substantial portion of funding will be used to complete Phase I/II ESAs, Regulated Building Material (RBM) Surveys and plans in support of adaptive reuse of at least five (5) vacant large multi-story buildings in downtown El Paso. As noted in the table below, a conservative estimate of the economic benefits associated with mixed-use development of these sites includes creation of up to 300 housing units and 362 retail/office jobs. The estimates assume ground floor retail/restaurant development with an average of four upper floors of multi-family housing/office space.

Description	Estimated Size[1]	Estimated New Jobs[2]
Apartments/Condos	300,000 SF (300 units)	n/a
Retail	120,000 SF	104 (1,147 SF/worker)
Restaurant/Lounge/Pub/Bar	55,000 SF	71 (768 SF/worker)
Office	75,000 SF	187 (401 SF/worker)
Total Estimates	**482,500 SF**	**362 Jobs**

[1]Unit est. based on average apartment size of 1,000 SF. [2]Job estimates based on the USEIA's 2016 employment estimates.

Non-Economic Benefits: (1.) *Energy Efficiency Projects*: As the "Sun City", El Paso understands the importance of ***renewable energy***, especially photovoltaics. Adaptive reuse projects will highlight historic preservation, infill development, and sustainable building design. Additionally, passive rainwater harvesting elements will be integrated into redesigns, as is showcased with the iconic San Jacinto Plaza. (2.) *Greenspace/Recreation*: Supporting revitalization of former industrial areas on the SE edge of downtown El Paso could help connect the DMD to the Chamizal area to the east, which will tie-in to the vision for a county-line to county-line trail that encourages active lifestyles. Additionally, San Elizario is planning to repurpose the recently acquired 115-acre Singleton Farm into recreational/event space.

1.c.i. Resources Needed for Site Reuse: The DMD has an impressive track-record of collaborating with its partners to draw upon multiple resources to support revitalization efforts. Since 2011, DMD managed grant programs, including the Commercial Façade Improvement Program, have led to >$307M in private investment. The Coalition partners will draw upon their collective expertise to leverage EPA funding with other state/federal grants, funding strategies, and an impressive array of local redevelopment incentives:

- ***Special Designations***: The DMD is a Business Improvement District (BID) and Tax Increment Reinvestment Zone (TIRZ). TIRZ funding can be used to pay for both demolition and remediation costs. Funds are also used to support infrastructure improvements, sanitation services, murals, lighting, façade and pedestrian improvements. Furthermore, as noted in Section 1.b.ii, parts of the DMD, San Elizario and Vinton target areas are DOZs, which offer incredible incentives for developers/investors.
- ***Assessment and Remediation Resources***: The Coalition will seek assistance from the TCEQ and Railroad Commission of Texas (RRC) Brownfields Response Program (BRP), who can provide technical and financial assistance with supplemental assessment/cleanup activities. When feasible, the Coalition is also familiar with pursuing insurance claims/identifying responsible parties to fund major cleanups.
- ***Revitalization Resources***: Developers of brownfields in El Paso can take advantage of several incentives:
  (1.) *Historic Investment Tax Credits* – Tax & local valuation credits for historic preservation projects;
  (2.) *Property Assessed Clean Energy (PACE) Program* – Low-cost loans for resilient, energy efficient projects;
  (3.) *Multi-Family Tax Exemption Program* – Provides multi-year tax exemption for priority housing projects;
  (4.) *Transit Oriented Development (TOD)* – Property tax incentives for projects within designed TOD areas;
  (5.) *Downtown Incentive Programs* – City-led financing strategies to attract housing/commercial investment.

1.c.ii. Use of Existing Infrastructure: The target areas are located within fully developed urban areas with existing infrastructure. Additionally, this project will leverage the following infrastructure improvements:

Area	Major Infrastructure Improvements		
	Name	**Description**	**Status**
DMD/City	*Paseo de las Luces*	$2.3M Lighting & pedestrian mall improvements on El Paso St.	Complete
	Downtown Parking	Strategies to balance supply/demand of parking in the DMD.	Underway
	San Jacinto Plaza	$5.3M renovation of the historic 1869 plaza.	Complete
	Sun City Streetcar	4.8-Mile renovation of historic streetcar system.	Complete
	Texas Ave Corridor	TxDOT is conducting a study to identify improvements.	Underway
	Montana Avenue	$45.5M, 17-mile Bus Rapid Transit serving DMD & airport.	Underway
County	*Paso del Norte Trail*	County-wide trail to connect DMD with other areas/towns.	Planned
	San Elizario	Renovated La Bodega Art Center & pedestrian improvements aim to attract further investment in Mission Trail area.	Underway
	Vinton Village	Sidewalk/streetscape improvements on Vinton Rd to support town center. Established Economic Development District.	Complete

Additionally, a significant amount of funding will be used for asbestos/lead-based paint surveys and abatement plans in support of adaptive reuse of historic structures. Adaptive reuse is an efficient/ effective strategy to preserve the historic character of the DMD, San Elizario & Vinton Village target areas.

2. COMMUNITY NEED & COMMUNITY ENGAGEMENT:

2.a.i. The Community's Need: Many of the El Paso region's most economically distressed residents live within the El Paso DMD (pop. 4,900), City of San Elizario (pop. 9,200) and Vinton Village (pop. 1,721) target communities. Residents here are particularly disadvantaged, suffering high rates of unemployment, poverty and households receiving government assistance (1.5-6X state/national averages). Median incomes are as low as <1/3 of the state/national averages, and >90% of residents are Hispanic or Latino.

Data Type[a]	DMD Primary Target Area			City of San Eli	Vinton Village	City of El Paso	El Paso County	Texas	U.S.
Census Tract (CT) ID	*CT 17*	*CT 18*	*CT 19*	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
% Hispanic or Latino	**85.9%**	**96.3%**	**99.4%**	**99.8%**	**96.9%**	**80.8%**	**82.2%**	38.9%	17.6%
Median Income	**$18,382**	**$17,992**	**$13,513**	**$26,807**	**$35,568**	**$44,431**	**$43,244**	$57,051	$57,652
Homeownership Rate	**9.8%**	**7.5%**	**9.9%**	68.5%	78.5%	**25.5%**	**61.6%**	62.0%	63.8%
Unemployment Rate	**6.2%**	**7.4%**	**13.6%**	**11.0%**	**7.4%**	**6.9%**	**7.0%**	5.8%	6.6%
Poverty Rate	**59.6%**	**58.7%**	**65.7%**	**39.4%**	**34.5%**	**20.3%**	**21.7%**	16.0%	14.6%
% Households FS/SNAP	**40.6%**	**56.8%**	**67.9%**	**43.6%**	**37.9%**	**20.7%**	**22.0%**	12.7%	12.6%
% Households SSI	**11.5%**	**35.3%**	**23.0%**	**6.5%**	**10.4%**	**7.0%**	**7.0%**	4.8%	5.4%

Bold/shading *indicates results that exceed or are less than Texas and U.S. averages. N.A. = Not Applicable. SSI = Social Security Income; FS = Food Stamps. SNAP = Supplemental Nutrition Assistance Program. 2013-2017 American Community Survey, 5-yr data (www.factfinder.census.gov).*

Generational poverty and health and welfare issues make it extremely difficult to attain higher education and better employment. Residents in these areas lack the resources necessary to address brownfields. Furthermore, the City and its partners are unable to draw upon other local sources of funding due to:

- The DMD's primary source of revenue for improvements is a small fixed-rate fee on property values. During 2016-2018 this resulted in consecutive annual budget decreases of -1%, -1% & -2%, respectively.
- Recent border security efforts have impacted the cross-border economy that El Paso desperately relies on. In the past few months alone this has led to a reduction of $200,000 in taxes generated for services.
- With its unique status as a sprawling desert border town, El Paso has limited ability to increase its tax-base through annexation. Thus, the City is motivated to leverage EPA funds for strategic infill projects.

2.a.ii. Threats to Sensitive Populations: 2a.ii.(1) Health or Welfare of Sensitive Populations:

The DMD, San Elizario and Vinton target communities include some of the highest concentrations of low income and minority populations in the region. As shown in the table on the right, EPA's Environmental Justice Screening (EJSCREEN) Tool reports that each of the target areas are above the 92nd percentile for each of the sensitive population categories of overall demographic index, minority, low income, linguistically isolated, and lower High

Sensitive Population Categories[b]	Percentile in the US		
	DMD	San Elizario	Vinton
Demographic Index	99	98	96
Minority	94	98	96
Low Income Population	99	96	92
Linguistically Isolated	99	99	99
< HS Education	98	98	94

[b] Generated using EPA Environmental Justice Screening (EJSCREEN) Tool on 10/24/19.

School education compared to the US as a whole. ***Welfare concerns*** in the target areas include homelessness, unemployment, and lack of quality affordable housing, health insurance and recreational amenities. As detailed below, ***health concerns*** include asthma, lead poisoning, obesity and poor mental/physical health. Brownfield redevelopment will provide critical economic relief by attracting new businesses that will provide short-term (construction) and long-term employment, and reduce the demand for welfare assistance. The grant will also be used to transition blighted sites that exacerbate public health issues into quality affordable housing and facilities that can deliver improved social services.

2.a.ii.(2) Greater Than Normal Incidence of Disease & Adverse Health Conditions: The table below includes prevalence rates for 10 chronic disease and health indicators for DMD residents, based on data from the Centers for Disease Control and Prevention (CDCP)[c]. Included in the table are the average prevalence rates for all 2,760 Census Tracts (CTs) in Texas & 27,210 CTs in 500 cities included in the study.

Health Measure Estimates for DMD Target Area[d] [A]

Health Measure	Prevalence in Target Area [B]	Average Prevalence in Texas [C]	Percentile among CTs in 500 US Cities [D]	Health Measure	Prevalence in Target Area [B]	Average Prevalence in Texas [C]	Percentile among CTs in 500 US Cities [D]
Lack of Health Insurance	**56.5**	26.1	**99.97%**	Kidney Disease	**7.6**	2.9	**99.93%**
High Blood Pressure	**45.9**	26.9	**93.6%**	No Leisure Time/Physical Activity	**54.3**	28.3	**99.94%**
Asthma	**10.8**	8.8	**76.4%**	Poor Mental Health	**20.1**	12.7	**97.1%**
Diagnosed Diabetes	**29.5**	11.6	**99.95%**	Obesity	**46.2**	33.6	**95.3%**
High Cholesterol	**49.5**	36.0	**99.78%**	Poor Physical Health	**30.2**	12.7	**99.98%**

The DMD scores significantly worse (i.e. - has higher prevalence rates) for all 10 health measures than the average rates for Texas. Prevalence rates in the DMD rank above the 76.4 percentiles when compared to data for all CTs included in the CDCP study. For six of the measures (lack of insurance, diabetes, high cholesterol, kidney disease, lack of leisure time/activity & poor mental health), prevalence rates are higher than 99.78 - 99.98% of CTs in the US. Funding will be used to better understand exposure risks of contaminants. Health impacts will be reduced as exposure pathways are mitigated. For example, removal of soil/groundwater sources will reduce exposure from ingestion/inhalation of particulates, and asbestos/lead-based paint abatement in aging structures will reduce potential for asthma/poisoning. The project will also lead to better housing, employment and recreational facilities that will improve health indicators such as lack of health insurance, physical activity, obesity and poor mental and physical health.

2.a.ii.(3) Disproportionately Impacted Populations: El Paso's rich history and incredible growth has resulted in cumulative impacts that persist to the present day. As demonstrated in the "Environmental Justice Indicators" (EJI) table, sensitive populations within the DMD, San Elizario and Vinton target areas fall above the 70th percentile for disproportionate burden and exposure to nearly all air quality and hazardous substance sources of pollution when compared to the entire US. The assessment/cleanup of brownfields will help to reduce health threats to residents from exposure to contaminants, in particular the following:

Type	Environmental Justice Indicators (EJI)[e]	Percentile in the US		
		DMD	San Eli	Vinton
Air Quality	Particulate Matter (PM)	**75**	**94**	**79**
	Air Toxics Cancer Risk	**78**	**94**	**78**
	Respiratory Hazard	**73**	**81**	**73**
	Traffic Proximity/Vol.	**94**	63	**76**
Hazardous Substances	Lead Paint	**89**	**76**	**71**
	Haz. Waste Proximity	**80**	**80**	**82**
	Wastewater Discharge	**81**	**84**	**96**

- Air Quality: Infill development of brownfields will help reduce urban sprawl throughout the region, greatly reducing vehicle emissions. Furthermore, creating quality affordable housing within the DMD and facilitating transit-oriented development (TOD) along the Texas Avenue/Vinton Road Corridors will provide opportunities for residents to live closer to their jobs and access improved public transit options.
- Hazardous Substances: The grant will be used to identify legacy soil/groundwater contamination associated with brownfields in the target areas, and to identify remedial measures necessary to address those threats at priority sites. For example, grant funds will be used to complete RBM Surveys to remove asbestos/lead-based paint from historic structures in support of adaptive reuse and/or demolition.

2.b. Community Engagement: 2.b.i. Project Partners/2.b.ii Roles: The DMD will work closely with its Coalition partners, the **City of El Paso** and **El Paso County,** to connect with stakeholders in each target community and facilitate a cohesive process that is inclusive of the greater interests of the region. **The**

[c] https://www.cdc.gov/500cities/

[d] *Notes for Table . A) Data accessed from the CDCP website on 1/19/2019. B) The target area CTs include CTs 17, 18, & 19. C) Average of values for all 2,760 Texas CTs included in the CDC study. D) Ranking of the average value for the target area CTs versus those for all 27,210 urban CTs in 500 US cities included in the study. A percentile value of 99.8% means that the average prevalence in the Target Area is higher (worse) than that in 99.8% of all US CTs evaluated.*

[e] Generated using EPA Environmental Justice Screening (EJSCREEN) Tool on 10/24/19.

City offers redevelopment incentives and will serve as an important connector with property owners and developers interested in the DMD and Texas Avenue Corridor. Developers share valuable information with the City about their challenges, which often include brownfield-related issues. This "insider look" will ensure the grant will advance feasible/high-impact projects in El Paso. **The County** will be the connection to **San Elizario**, **Vinton** & rural areas, which have huge revitalization potential and can help contain sprawl.

Additionally, the Coalition has identified several local project partners who will bring important community voices to the table. During 2019, the DMD hosted four open houses to share info about the EPA Grant and solicit commitments to serve on the Brownfield Advisory Committee (BAC). Participants asked questions about environmental issues, project goals and opportunities to get involved. Below is a summary of commitments. In addition to their specific roles, each has committed to serving on the BAC and supporting outreach. The BAC will establish prioritization criteria & be actively involved in all activities.

Partner Name (Type)	Contact Person; Email; Phone #	Specific Role in the Project
TCEQ (State Reg. Agency)	Kent Waggoner; kent.waggoner@ tceq.texas.gov; 915-834-4949	Kent manages the local TCEQ Office, and has offered to assist with oversight of inventory, site eligibility, Phase I/II ESAs & cleanup.
El Paso Dept. of Public Health (Local Health Dept.)	Joy Leos; leosjd@elpasotexas.gov; 915-212-6592.	Provide health data for target communities and technical assistance regarding health/risk assessments for specific sites.
San Elizario (Target Community)	David Cantu; alderperson2@cityof sanelizario.com; 915-974-7037.	Serve as local liaison with stakeholders in the San Elizario target area. Help with outreach and prioritizing brownfields in the area.
Vinton Village (Target Community)	Manuel Leos; mleous@vintontx.us; 915-886-5104.	Serve as local liaison with stakeholders in the Vinton Village target area. Help with outreach and prioritizing brownfields in the area.
Borderplex Alliance (Economic Dev. Agency)	Marcos Delgado; mdelgado@border-plexalliance.org; 915-873-1069.	Focused on economic development along the border. Help connect with businesses to attract investment/jobs to brownfields.
Southside Neighborhood (Resident Group)	Pablo Lopez; pFL15@yahoo.com; 915-502-1222	Connect impacted residents to the project and advocate for the needs of the neighborhood during grant implementation activities.
Segundo Barrio Futbol Club (Neighborhood Sports)	Simon Chandler; srchandl@episd.org; 915-613-7756	Important community-based sporting/social group in El Paso. Strong connection to area schools & building community support.
Mike Johnson (Property Owner/Developer)	Mike Johnson; Mjohnson@ MJrealprop.com; 915-590-2444	Property owner/developer of properties in El Paso that include the Former JC Penney Building in the DMD.
Eco El Paso (Environmental Org.)	Fred Dalbin; fdalbin@ wrightdalbin.com; 915-637-3778.	Play a key role as advocates for environmental restoration and greenspace improvements throughout the greater El Paso area.
Frontera Land Alliance (Local Land Trust)	Janae Reneaud Field; janae@ fronteralandalliance.org; 915-351-8352	Local land trust with a mission to support infill development that reduces sprawl & preserves natural resources in greater El Paso.
Sacred Heart Parish (Faith-based Org.)	Fr. Timothy McMahon; 915-532-5447	Important gathering place. Pledged meeting space, outreach support & and to represent the best interests of DMD residents.

2.b.iii. Incorporating Community Input: The DMD and its partners believe that effective community engagement is imperative to the success of this project. During the first quarter (1Q), the Coalition will develop a Community Involvement Plan (CIP). The CIP will utilize existing channels of communication, as well as innovative strategies to ensure meaningful input is infused into all grant implementation activities.

Press Releases, Fact Sheets and Webpages: During 1Q, the DMD will develop press releases, fact sheets, Phase I/II ESA process diagrams and site nomination forms. These documents will be available via a project-specific webpage that is operated/maintained by the DMD. The webpage will be linked to Coalition partner websites to ensure information is readily available within each target community.

Meetings with Property/Business Owners and Developers: The DMD and City regularly conduct meetings with property owners, business owners and developers, and will leverage these relationships to promote the project and solicit interest/participation from private investors within each target area.

Social Media: The DMD's dedicated outreach division takes pride in ensuring that residents and business owners feel included in decision-making and are up to date on events. This includes operating the "Downtown El Paso" website. With a following of over 22,000 members on Facebook and 31,000 on Instagram, the DMD emphasizes outreach through social media to engage with younger audiences.

Postcards, Notices and Newsletters: To ensure that Spanish and Korean-speaking residents/business owners receive updates, notices are often posted in Spanish and Korean. Postcards are sent to the robust mailing list maintained by the DMD, and a weekly newsletter is sent to everyone on the distribution list.

Innovative Strategies: Tactical urbanism events, such as pop-up parks or chalk-paint walls near schools or playgrounds, will be tools the DMD will use to capture full-time, busy parents and business owners.

This menu of community engagement methods will allow stakeholders to provide meaningful input that will influence each phase of work. Robust involvement by those most affected by brownfields will lead to strong community buy-in that will maximize the success of priority redevelopment projects.

3. TASK DESCRIPTION, COST ESTIMATES & MEASURING PROGRESS:

3.a. Description of Tasks (i. Implementation Activities; ii. Schedule; iii. Leads; and iv. Outputs): The scope of work has been organized into the **five** primary tasks described in this section.

Task 1: Cooperative Agreement (CA) Management, Reporting & Other Eligible Activities
i. Implementation: The DMD will manage all aspects of the project, including coordination with the EPA, Coalition Members and Qualified Environmental Professional ("QEP" or "Consultant"). Reporting will include: 1) Quarterly Progress Reports (QPRs); 2) Property Profiles/ACRES Updates; 3) Annual/Final Disadvantaged Business Enterprise (DBE) and Federal Financial Reports (FFRs); and 4) a Final Performance Report documenting accomplishments, outputs, outcomes, and success stories. The Coalition will attend two brownfield conferences. Any proposed changes will be discussed with and approved by the EPA.
ii. Schedule: Management & Reporting will be ongoing throughout the 3-year implementation period. A State/Regional Workshop/Conference and National Brownfield Conference are anticipated in 2021-2022.
iii. Leads: The DMD will lead this task. The City and County will assist with financial management, execution and compliance with the terms and conditions of the CA. The Consultant will assist with reporting activities.
iv. Outputs: Agendas/minutes from stakeholder meetings; 12 QPRs; 3 DBE/FFR Reports; ACRES Updates (ongoing); 1 Final Performance Report; 2 Brownfield Conferences attended by DMD Coalition members.
Task 2: Community Engagement
i. Implementation: Detailed plans for engaging the community are provided in Section 2.b., including: 1) Community Involvement Plan (CIP); 2) fact sheets & press releases; 3) project webpage; 4) up to 8 Brownfield Advisory Committee (BAC) Meetings; & 5) other public outreach and key stakeholder meetings.
ii. Schedule: The CIP, fact sheets and webpage will be developed during the first quarter (1Q) of the project. A BAC kick-off meeting will be held during the second quarter (2Q) and convened quarterly for the first year, and semi-annually thereafter; other meetings and public engagement events will occur as needed.
iii. Leads: The DMD will lead this task, with support from the Coalition partners, BAC and Consultant.
iv. Outputs: CIP; fact sheets; press releases/articles; webpage content (updated regularly); 8 BAC Meetings (including presentations, agendas, minutes, etc.); other stakeholder meetings/materials.
Task 3: Inventory, Prioritization and Site Selection
i. Implementation: A comprehensive inventory will be completed for the **DMD target area**. The inventory will include a list of vacant and underutilized buildings (including 1st floor vs. upper floor occupancy) and lots. This data, combined with a focused market study (part of Task 5), will be leveraged to identify catalyst projects that are most likely to spur reinvestment in the vacant multi-story buildings in the DMD. The inventory will be linked to the City's geographic information system (GIS) to maximize its long-term value as a planning resource. Inventories will also be completed in other target areas (e.g. - the **Texas Avenue Corridor, San Elizario and/or Vinton Village**) to gather information on priority sites. The BAC will inform the prioritization process by establishing criteria to select sites with the greatest socioeconomic benefits.
ii. Schedule: The draft inventory will be completed during 2Q and presented to the BAC for prioritization during 3Q. Inventory updates and site selection will continue over the three-year implementation period.
iii. Lead: The DMD will lead this task, with support from the Coalition partners, BAC and Consultant.
iv. Outputs: Inventory, Prioritization & Site Selection Tech Memos; GIS files; tables; figures.
Task 4: Phase I/II Env. Site Assessments (ESAs) and Regulated Building Material (RBM) Surveys
i. Implementation: Includes completion of up to 14 Phase I ESAs (in accordance with the AAI Final Rule and ASTM E1527-13 Standard) and up to 6 Phase II ESAs on the priority sites identified in Section 1.a.ii. **At least one site will be selected by each Coalition member in each jurisdiction**. Many of the priority sites contain old buildings that are prime for adaptive reuse, therefore, budget is included for up to 10 RBM Surveys. This task includes preparation of: 1) site eligibility determination (ED) forms; 2) access agreements; 3) EPA-approved Quality Assurance Project Plan (QAPP) prior to assessment activities; 4) EPA-approved Sampling and Analysis Plans (SAPs) and Health and Safety Plans (HASPs) prior to Phase II ESAs/RBM Surveys; & 5) National Historic Preservation Action (NHPA) §106 & Endangered Species Act §7(a)(2) requirements.
ii. Schedule: **Year 1**: QAPP, 4 Phase I ESAs, 2 Phase II ESAs, and 2 RBM Surveys. | **Year 2**: 8 Phase I ESAs, 3 Phase II ESAs, and 4 RBM Surveys. | **Year 3**: 2 Phase I ESAs, 1 Phase II ESA, and 2 RBM Surveys.
iii. Lead: The QEP will lead this task under the direction of the DMD/Coalition, who will help secure access.
iv. Outputs: 1 Master QAPP; 18 ED Forms; 14 Phase I ESAs; 6 Phase II ESAs; 10 RBM Surveys.
Task 5: Site-Specific Cleanup/Reuse Planning and Area-Wide Planning (AWP)
i. Implementation: Analysis of Brownfield Cleanup Alternatives (ABCAs), Remedial Action Plans (RAPs), and/or Reuse Plans will be completed for four sites to help inform reuse plans. Two AWP studies will be

completed. One will be focused on the DMD, including a market study aimed at attracting people to live in downtown. A second will be focused on another priority target area (e.g. - revitalization of Texas Avenue).
ii. Schedule: Year 1: 1 ABCA/RAP; 1 AWP | Year 2: 2 ABCAs/RAPs; 1 AWP | Year 3: 1 ABCAs/RAPs
iii. Lead: The QEP will lead the technical elements of this task under direction of the Coalition.
iv. Outputs: 4 ABCAs/RAPs/Site-Specific Reuse Plans; 2 AWP Studies.

3.b. Cost Estimates: A summary of the overall budget is provided in the following table. >50% Of funding is allocated towards Phase I/II ESAs & RBM Surveys. No indirect or health monitoring costs are requested.

Line #	Budget Categories	Task 1 Management, Reporting	Task 2 Community Engagement	Task 3 Inventory & Site Selection	Task 4 Phase I/II ESAs & RBM Surveys	Task 5 Cleanup/Reuse Planning & AWP	Totals
1	Personnel + Fringe (Petro)	$3,000	$1,500	$1,500	$1,050	$2,250	$9,300
2	Travel (Petro)	$3,000	$0	$0	$0	$0	$3,000
3	Supplies (Petro)	$0	$750	$0	$0	$250	$1,000
4	Contractual (Petro)	$3,000	$5,250	$4,500	$78,450	$45,500	$136,700
5	**Total Direct Costs (Petro)**	**$9,000**	**$7,500**	**$6,000**	**$79,500**	**$48,000**	**$150,000**
6	Personnel + Fringe (Haz)	$9,000	$4,500	$4,500	$3,150	$6,750	$27,900
7	Travel (Haz)	$9,000	$0	$0	$0	$0	$9,000
8	Supplies (Haz)	$0	$2,250	$0	$0	$750	$3,000
9	Contractual (Haz_	$9,000	$15,750	$13,500	$235,350	$136,500	$410,100
10	**Total Direct Costs (Haz)**	**$27,000**	**$22,500**	**$18,000**	**$238,500**	**$144,000**	**$450,000**
11	**Total Budget (Combined)**	**$36,000**	**$30,000**	**$24,000**	**$318,000**	**$192,000**	**$600,000**

CA = Cooperative Agreement; ESA = Environmental Site Assessment; RBM = Regulated Building Material; Haz = Hazardous; Petro = Petroleum.

The following table provides a summary of the estimated costs for project outputs by task and budget category.

Task 1 – CA Management, Reporting & Other Eligible Activities: Total Budget = $36,000
Personnel (avg. $40/hr) + Fringe (avg. $20/hr) of **$12,000** are budgeted for an estimated (est.) 200 hours (hrs) of work by DMD staff [combined average (avg.) of $60/hr] to complete CA management & reporting activities. Travel Costs of **$12,000** are budgeted for expenses for five Coalition members to each attend 2 BF conferences. Costs are est. at $1,200/person/conference based on recent conference costs. Contractual Costs of **$12,000** are budgeted (96 hrs @ $125/hr) of work by the QEP to assist with reporting requirements.
Haz vs Petro: *For all Task 1 activities, 25% of costs will be allocated to petroleum and 75% to haz. funding.*
Task 2 – Community Engagement: Total Budget = $30,000
Personnel + Fringe Costs of **$6,000** are budgeted for DMD staff (100 hrs @ $60/hr) to lead engagement activities. Supply Costs of **$3,000** are budgeted for printing ($500) and mailing public notices ($2,500). Contractual Costs of **$21,000** are budgeted (168 hrs @ $125/hr) for assisting with outreach activities.
Haz vs Petro: *For all Task 2 activities, 25% of costs will be allocated to petroleum and 75% to haz. funding.*
Task 3 – Inventory, Prioritization & Site Selection: Total Budget = $24,000
Personnel + Fringe Costs of **$6,000** are budgeted for an estimated 100 hrs of work by DMD staff (@ $60/hr) to oversee the inventory and prioritization activities. Contractual Costs of **$18,000** are budgeted for an estimated 144 hrs (@ $125/hr) of work by the QEP for developing the brownfield inventories.
Haz vs Petro: *For all Task 3 activities, 25% of costs will be allocated to petroleum and 75% to haz. funding.*
Task 4 – Phase I and II ESAs & RBM Surveys: Total Budget = $318,000
Personnel + Fringe Costs of **$4,200** are budgeted for DMD staff (70 hrs @ $60/hr) to oversee the ESA/RBM activities. Contractual Costs of **$313,800** include costs for the QEP to complete 1 Master QAPP (**$7,800**); 18 ED forms ($500 each = **$9,000**); 14 Phase I ESAs ($4,000 each = **$56,000**); 10 SAPs ($1,500 each = **$15,000**); 6 Phase II ESAs ($26,000 each = **$156,000**); and 10 RBM surveys ($7,000 each = **$70,000**).
Haz vs Petro: *Costs will be allocated based on the eligibility (petro. and/or haz.) for each site. 25% Of the overall task budget will allocated to petro. sites and 75% to haz. sites.*
Task 5 – Site-Specific Cleanup/Reuse & Area-Wide Planning (AWP): Total Budget = $192,000
Personnel + Fringe Costs of **$9,000** are budgeted for DMD staff (150 hrs @ $60/hr) to coordinate the site-specific plans and AWP studies. **ABCAs/RAPs/Reuse Plans:** Contractual Costs of **$32,000** are est. based on the QEP completing 4 ABCAs/RAPs/Reuse Plans at an avg. cost of $8,000; **AWP:** Supply Costs of **$1,000** include $500 for printing and $500 for mailing costs. Contractual Costs of **$150,000** are budgeted for the Consultant to complete 2 AWP studies (600 hrs/study @ $125/hr = $75,000/study).
Haz vs Petro: *Assumes 1 RAP/ABCA/Site Reuse Plan for a petro site & 3 RAPs/ABCAs/Reuse Plans for haz sites. For AWP, 25% of the budget will be allocated to petro. funding and 75% to haz. funding.*

3.c. Measuring Environmental Results: The status and date of completion of **outputs** and anticipated **short- and long-term outcomes** will be tracked and reported to EPA via Quarterly Progress Reports (QPRs), ACRES and the Final Performance Report. QPRs will list goals accomplished and activities planned for the next quarter. Any significant deviations in schedule will be discussed with the EPA Project Officer to develop corrective actions. Between meetings and QPRs **outputs** will be tracked in a database including: (1) # of potential brownfields identified; (2) # of Phase I ESAs; (3) # of Phase II ESAs; (4) # of Analysis of Brownfield Cleanup Alternatives (ABCAs) and/or Remedial Action Plans (RAPs); and (5) # of community meetings and success stories. Sites assessed will be linked to parcel data, to allow for efficient tracking and analysis of project outcomes using GIS. This will also enable the number of parcels and acreage to be accurately tracked. The following **short- and long-term outcomes** will be tracked: (1) # of sites cleaned up; (2) # of property title transfers; (3) # of sites and acres of land redeveloped; (4) # of acres of greenspace created; (5) $ of private investment and leveraged funding; (6) # of jobs created or retained; and (7) increased property value and tax revenue. To ensure all activities are completed within the three-year period, the DMD will further refine the project schedule/milestones as part of the Cooperative Agreement (CA) Work Plan and continually evaluate progress afterwards. The DMD will make updates to ACRES beyond the project end date, to ensure outcomes are captured as priority sites are redeveloped.

4. PROGRAMMATIC CAPABILITY & PAST PERFORMANCE:

4.a.i. Organizational Structure: The DMD will lead the Coalition with support from its partners, the City of El Paso & El Paso County. Letters of Commitment are provided in **Attachment C.** The Coalition partners have a long history of collaborating to advance revitalization goals throughout the greater El Paso region.

Governance Structure: The Coalition has already executed a Memorandum of Agreement (MOA; provided in **Attachment D**) to document and clearly define the roles/responsibilities of each partner. The Coalition will use a collective governance structure to ensure the interests of each member are represented throughout the project. As noted in the MOA, the City and County have committed to providing resources and leveraging their collective experience in successfully managing past EPA Brownfield Grants and numerous state/federal grants to assist the DMD with financial management, and project execution. Since 2011, the DMD and the City have worked cooperatively under the terms of a similar Interlocal Agreement (IA; provided as **Attachment E**). The IA between the DMD and the City serves the purposes of stimulating redevelopment and business activity in the DMD, and the EPA Grant project will serve as an extension of this partnership. A Brownfield Advisory Committee (BAC) has been established that includes each Coalition partner (and other key stakeholders). The BAC will guide the site prioritization process, inform cleanup/reuse planning activities and assist the Coalition with outreach. The Coalition partners will also participate in monthly calls to ensure all members are meaningfully involved and clear internal objectives are established in support of timely/successful expenditure of grant funds.

4.a.ii. Description of Key Staff: DMD staff have extensive experience managing district projects, including:

- **Joe Gudenrath, Executive Director, DMD**: With 18+ years of management experience in municipal government with a focus on special districts, ***Joe will serve as the Brownfield Project Director/Manager***. Over the past 5 years, Joe has been responsible for carrying out the mission and goals of the DMD. This includes forming partnerships, managing finances and grant programs. These endeavors, from helping small businesses succeed, to building cross sector coalitions, have been successful because of Joe's passion and commitment. Joe's experience will ensure effective expenditure of EPA funding while maintaining a consistent focus on community revitalization goals.
- ***Terry Mais, Office & Project Coordinator, DMD*:** Terry oversees financial/administrative functions and has responsibility for financial coordination of the grant/banner programs. During her tenure, the DMD has consistently received clean reports by independent auditors. Terry will work closely with Joe and City/County staff to ensure the grant is well managed & financial/administrative requirements are met.
- ***DMD Board of Directors***: The Board is comprised of 21 members having ownership of property, businesses or their representatives within the DMD. The board has responsibility for the management of the district, including the adoption of an annual budget and approval of all contractual obligations.

Additionally, the Coalition members each assigned senior-level staff to support all phases of the project:

- ***City of El Paso Lead: Mirella Craigo, Special Districts Program Manager***: Mirella manages all City Tax Increment Reinvestment Zones (TIRZs). She manages the City's financial programs designed to stimulate private sector investment, resolve infrastructure deficiencies, and enhance and increase residential/commercial development. She has over 20 years of relevant financial services experience.

- ***City of El Paso: Elda Hefner, Grants Administrator, Office of the Comptroller:*** Elda will serve as the primary contact to assist the DMD with developing best practices for effective grant management. She will draw upon the City's experience with effectively implementing previous EPA Brownfield Grants, as well as an average of $75 million in other state and federal funding awarded to the City annually.
- ***El Paso County Lead: Jose Landeros, Director, Planning & Development***: Jose is responsible for services and programs related to community development, development review and inspections, transportation and GIS. In this role, Jose oversees the implementation of numerous projects and processes, including the $425M Comprehensive Mobility Plan transportation investment. Jose currently serves as Vice Chair of the El Paso Metro Planning Project Advisory Committee.

4.a.iii. Acquiring Additional Resources: The DMD and its Coalition partners have additional technical and support staff to assist with grant implementation activities. The DMD also has proactive succession planning if staff changes are required. Succession plans will eliminate project delays and ensure staff who are reassigned to the project have appropriate qualifications and experience. The DMD routinely contracts with consultants and has established equal opportunity procurement procedures for ensuring a fair bidding process. In 2019 the DMD used a qualifications-based process in conformance with 2 CFR 200.317–200.326 to contract a Qualified Environmental Professional (QEP) to assist with implementation of this project. Advanced procurement and execution of the MOA will position the Coalition for expedited grant implementation activities immediately upon issuance of the Cooperative Agreement (CA).

4.b. Past Performance & Accomplishments: 4.b.i. Has Previously Received an EPA Brownfields Grant: As documented in the MOA (**Attachment D**), the City/County have pledged to assist the DMD with grant/financial management activities. The City, in particular, will draw upon its experience in successfully implementing three previous EPA Assessment [Pilot and Community-Wide Assessment (CWA) Grants]:

- (1) FY01 Brownfield Assessment Pilot | Total: $200,000 | Term: 10/01/01 – 09/30/05 (closed).
- (2) FY07 CWA Grant for Petroleum |CA BF-96660301-1| $200,000 | Term: 10/01/07-06/30/11 (closed).
- (3) FY07 CWA Grant for Hazardous |CA BF-96660401-1|$200,000| Term: 10/01/07-06/30/11 (closed).

Details for these grants, including accomplishments and compliance with grant requirements, include:

4.b.i.(1) Accomplishments: **(1) FY01 Brownfield Assessment Pilot Grant:** This grant focused on developing an initial inventory, coordinating with community stakeholders, and completing Phase I/II ESAs & cleanup planning in downtown and south central El Paso. ***Outputs***: Brownfield Inventory Report; community engagement materials; six Phase I ESA Reports; Progress Reports and a Final Performance Report. ***Outcomes***: 25 sites were identified. Nine sites were prioritized. Six sites (4.9 acres) were assessed using Pilot Grant funding and three sites (5.3 acres) were assessed using other funding. Cleanup was completed at one site. Success stories included: (a) a Phase I/II ESA was completed at the historic Union Freight Train Depot, which was subsequently restored; (b) cleanup of a former auto repair in downtown; & (c) assessment of a site that was subsequently redeveloped into the Double Tree Hotel in downtown.

(2) FY07 Petroleum & (3) FY07 Hazardous Substances: These grants focused on additional inventory and outreach activities, completing Phase I/II ESAs and cleanup plans throughout the City of El Paso. ***Outputs***: Brownfield inventory updates; community engagement materials; four Phase I ESAs; three Phase II ESAs; one Supplemental Assessment; Progress Reports and a Final Performance Report. ***Outcomes***: Eight sites were prioritized. Six sites (7.7 acres) were assessed. Three sites were designated "ready for reuse" and "redevelopment started". Success stories included: (a) Phase I/II ESAs were completed at two former gas stations in El Paso. The sites were subsequently redeveloped as commercial businesses; (b) A Phase I ESA was conducted at a former office building which is now occupied as the Texas Tech Health Sciences Center; (c) A Phase I ESA and Supplemental Assessment was completed at a vacant warehouse building, which has since been redeveloped as the First Avenue Lofts; and (d) A Phase II was conducted at a site that has since been redeveloped into a large (multi-block) housing development just east of the DMD.

4.b.i.(2) Compliance with Grant Requirements: For each grant, the City maintained compliance with the terms and conditions of the CAs (including the work plan/schedule, site eligibility, eligible uses of funding, required periodic reporting and ACRES updates). All phases were successfully completed, and each of the projects were closed out. As noted above, all target outputs and outcomes were achieved with only minor extensions in the implementation periods. Due to the age of these projects, records were not readily available to verify that 100% of the awards were expended, however, as noted above, EPA funding was leveraged to support environmental restoration, housing and commercial projects of significant benefit to El Pasoans.

ATTACHMENT A

Responses to Threshold Criteria

Threshold Criteria for Assessment Grants

1. APPLICANT ELIGIBILITY: All Coalition members are a "general purpose unit of local government" as defined in 2 CFR 200.64 and, therefore, eligible to receive EPA Brownfields Assessment Grant funding. Detailed eligibility information is provided below.

(a) Eligibility of Lead Entity:

The El Paso Downtown Management District (DMD) is the grant applicant and lead entity for the Coalition. The El Paso DMD, is a governmental entity created under Texas Government Code, Chapter 375 and is commonly known as a Municipal Management District. As such, they are eligible to receive federal funds. The organization was established by a petition of property owners in 1997 and imposes a special property tax assessment on properties within its boundaries.

Eligibility documentation for the El Paso DMD is provided as Attachment B and includes:

1. El Paso Downtown Management District, Administrative Rules, Policies and Procedures (Revised and approved November 1, 2018)
2. Governmental Code (Title 12 Subtitle A Chapter 375 Section .001) confirming the authority and eligibility of the El Paso DMD to receive federal grant funding)

(b) Eligibility of Coalition Members:

The City of El Paso and El Paso County are each eligible for federal funding as a General Purpose Unit of Local Government as defined in 2 CFR § 200.64.

(c) Letters of Commitment from Coalition Members:

Letters of commitment confirming membership of the City of El Paso and El Paso County in the Coalition are provided as Attachment C.

An executed Memorandum of Agreement between the Coalition members is provided as Attachment D

2. COMMUNITY INVOLVEMENT:

The DMD will work closely with its Coalition partners, the City of El Paso and El Paso County, to connect with stakeholders in each target community and facilitate a cohesive process that is inclusive of the greater interests of the region. The City offers redevelopment incentives and will serve as an important connector with property owners and developers interested in the DMD and Texas Avenue Corridor. Developers share valuable information with the City about their challenges, which often include brownfield-related issues. This "insider look" will ensure the grant will advance feasible/high-impact projects in El Paso. The County will be the connection to San Elizario, Vinton & rural areas, which have huge revitalization potential and can help contain sprawl.

Additionally, the Coalition has identified several local project partners who will bring important community voices to the table. During 2019, the DMD hosted four open houses to share info about the EPA Grant and solicit commitments to serve on the Brownfield Advisory Committee (BAC). Participants asked questions about environmental issues, project goals and opportunities to get involved. Below is a summary of commitments. In addition to their specific roles, each has committed to serving on the BAC and supporting outreach. The BAC will establish prioritization

criteria & be actively involved in all activities. Confirmed project partners are provided in Section 2.b of the narrative and demonstrate the significant community support for this project.

3. EXPENDITURE OF ASSESSMENT GRANT FUNDS:

The El Paso DMD has never received an EPA Brownfields Assessment Grant.

ATTACHMENT B

Documentation of Applicant Eligibility for the El Paso Downtown Management District

- Administrative Rules, Policies & Procedures
- Texas Government Code, Chapter 375

El Paso Downtown Management District

Administrative Rules, Policies and Procedures

Revised and Approved October 24, 2019

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The following have been approved by the Board of the DMD as the official Administrative Rules, Policies and Procedures of the DMD.

Section 1. Definitions

For purposes of these Administrative Policies and Procedures, the terms set forth below shall have the following definitions:

A. ***Board***: The Board of Directors of the El Paso Downtown Management District.

B. ***City Council***: The City Council for El Paso, Texas.

C: ***Chapter 375***: Chapter 375 of the Texas Local Government Code.

D. ***DBE***: Disadvantaged Business Enterprises, as defined in Section 8B.

E. ***Director***: A person appointed to serve on the Board of Directors of the District.

F. ***District Official:*** Directors, officers, personnel, and persons and business entities engaged in handling of investment or other services for the District.

G. ***District***: The El Paso Downtown Management District.

H. ***DMD***: The El Paso Downtown Management District also referred to herein as the "District."

I. ***DMD President***: the President of the District.

J. ***Executive Committee***: The Executive Committee of the DMD.

K. ***ED***: Executive Director of the DMD.

L. ***Operating Committees***: The committees overseeing the principal elements of the El Paso Downtown Management District's Service Plan.

M. ***Personnel***: Employees – whether directly employed, shared or loaned – and contractors who provide services for the management and administration of the District.

N. ***Service Plan:*** The Service Plan of the DMD approved by the Board of Directors.

O. ***Tax Assessor/Collector***: The El Paso County Tax Assessor/Collector's office.

Rules

The following sections contain the Rules applicable to the governance of the Board. These Rules – which function in effect as the "bylaws" of the Board – have been approved by the Board to supplement the provisions of Chapter 375 which govern the appointment of Directors, removal of Directors, powers of the Board, and the operation of the Board. To the extent there is any conflict between these Rules and Chapter 375 or other applicable law, the law will govern.

Section 2: Purpose and Powers

A. ***Purpose***.

1. ***General.*** The DMD is a municipal management district focused on economic development-driven initiatives and programs in Downtown El Paso. The DMD provides supplemental services paid for by the annual assessment levied on property owners in Downtown El Paso. The DMD Board of Directors represents Downtown property owners, business representatives, and tenants.

2. ***Legal Authorization.*** The DMD is established as a municipal management district pursuant to Chapter 375 to promote, develop, encourage, and maintain employment, commerce, economic development, and public welfare within its defined territorial area. The DMD is authorized to operate, engage in business activities, and promote Downtown El Paso to the full extent permitted by Chapter 375 and applicable law.

B. ***Powers***. The DMD shall possess all corporate and other powers provided by Chapter 375 and the statutes incorporated therein, by the Texas Constitution, the Texas Government Code, the Texas Local Government Code, and shall be entitled to engage in any legitimate pursuit not in contravention of the laws of the State of Texas and permitted for political subdivisions established pursuant to Chapter 375.

Section 3: The Board of Directors

A. ***Nomination and Service of Directors***.

1. ***Qualifications***. All Directors shall meet the qualifications provided in Texas Local Government Code § 375.063. A nomination form setting forth those qualifications shall be provided at the DMD's offices. That form must be submitted by any person interested in nomination. All submitted forms shall be reviewed by the Executive Committee as vacancies occur.

2. ***Appointment***. As further provided in Chapter 375, the Board shall recommend to City Council the names of persons qualified to serve, except in the case of a vacancy which shall be filled by the remaining Board members with a qualified person. Upon Council or Board appointment, as applicable, a Director will serve

a three (3) year term or the remainder of the existing term, may be re-appointed to up to two (2) successive terms beginning in 2017, and will serve until a successor is appointed, unless they resign or are removed for cause, as provided below.

3. ***Staggered Terms***. Beginning with the appointment of Directors in 2011, each Director slot will be assigned a Place Number from 1 through 21, the number of Directors on the Board. Seven Directors will have terms which expire each year. Terms for Directors #1-7 expire in 2021 (August) and every three years after. Terms for Directors #8-14 expire in 2022 (August) and every three years after. Terms for Directors #15-21 expire in 2020 (August) and every three years after.

4. ***Orientation***. Every new Director shall attend a mandatory orientation session about the organization and shall receive at said orientation a copy of the DMD Rules, Policies and Procedures. At the end of such session new Directors shall sign the Oath of Office and a form to be notarized acknowledging they have received the El Paso Downtown Management District Rules, Policies and Procedures and accept the responsibility of abiding by these Rules, Policies and Procedures.

5. ***DMD Autonomy.*** To ensure the independence and distinctiveness of the DMD and to avoid the perception of conflict of interests, no more than two (2) Directors of the DMD shall simultaneously serve as a member of a board of directors of another organization or be employed by the same organization, or represent the same Downtown ownership group. The only exception to this rule pertains to the membership of TIRZ Board No. 5.

B. ***Participations and Removal of Directors*****.**

1. ***Regular Participation***. In accepting a nomination from the Board to be recommended to City Council for appointment as a Director, it is understood by such person that participation in meetings of the Board is critical to the operation of the DMD.

2. ***Attendance*****.**

a. A Board member may be subject to a removal request from the Board to the City Council if the Board member misses three (3) regularly scheduled Board meetings within the same fiscal year.

A Board member is automatically considered to have resigned his/her board position if he/she misses three consecutive board meetings and fails to petition the Board Chair to remain on the board within 15 days of missing the third consecutive meeting. If a petition is made, the Executive Committee will make the final determination.

After a Director has missed one half or more of the regularly scheduled meetings during the prior twelve months, the Board by authority of Section 49.052(g) of the Water Code may elect to remove the person from office as a Director.

B. *Remote Participation*. Board members who are physically located outside of El Paso and provide sufficient notice to DMD staff may participate remotely in Board Meetings via videoconference call under the conditions established within Texas Government Code Section 551.127 Videoconference Call.

C. *Board Officers*

1. ***Officers***. The officers of the Board shall be a President, a Vice President, a Treasurer, and a Secretary, each of whom shall be elected by the Board or chosen in such other manner as may be prescribed by law. Such other officers, including assistant officers and agents as may be deemed necessary, may be elected or appointed by the Board or chosen in such other manner as may be prescribed by the Board. Any offices may not be held by the same person. Among its responsibilities, the Treasurer shall serve as the Investment Officer in compliance with Public Finance Investment Act (PFIA).

2. ***Election and Term of Office*.** Each officer shall hold office for a term of one year and until a successor is duly elected, appointed, designated and qualified. An officer may be elected to succeed himself or herself in the same office. However, an officer may not serve for more than six consecutive one-year terms. Election or appointment of an officer or agent shall not of itself create contract rights. Officer elections will be held annually at the October Board Meeting.

3. ***Removal of Officers*.** Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the District would be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

4. ***Vacancies*.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board for the unexpired portion of the term. A partial term of office will not count towards the six consecutive one-year "term limit" for officers set forth in section 3.C.2 above.

D. *Meetings.*

1. ***Regular Meetings*.** The Board may provide for regular meetings by resolution stating the time and place of such meetings. The meetings must be held within Texas and will be held within the District unless otherwise directed by the Board.

2. ***Special Meetings*.** Special meetings of the Board may be called at the request of the President of the Board or a majority of the Board. A person or persons

authorized to call special meetings of the Board may fix any place within the State as the place for holding any special meeting of the Board. The person or persons calling a special meeting shall notify the Secretary (as hereinafter defined) of the information required to be included in the notice of the meeting. The Secretary shall then give notice to the Directors as required. The special meeting must be held within the District unless otherwise directed by the Board.

3. ***Notice of Meetings*.** Written or printed notice of each meeting of the Board, with the exceptions of any emergency meetings called pursuant to the Texas Open Meetings Act, shall be delivered to each Director not less than three nor more than 20 days before the date of the meeting. The notice shall state the place, day and time of the meeting, who called the meeting, and shall specify with reasonable clarity the purpose or purposes for which the meeting is called. For purposes hereof, "delivery" of notice shall mean and include (i) receipted hand delivery to the Director or the Director's family members or employer; (ii) notice deposited in the United States mail, postage prepaid, and addressed to the Director at the address last furnished to the District by the Director in writing or, if none, at the address for the Director maintained by the Secretary; or (iii) electronic mail ("email") to the email address last furnished to the District in writing or, if none, at the email address for the Director maintained by the Secretary.

4. ***Quorum*.** A majority of the sitting Directors shall constitute a quorum for the transaction of official actions and business at any meeting of the Board; provided that if less than a majority of the sitting Directors is present at a meeting, a majority of the Directors present may take reports only (to the extent permitted by the Texas Open Meetings Act) and not deliberate or take action except to adjourn the meeting from time to time without further notice.

5. ***Proxies*.** There shall be no proxies.

6. ***Manner of Acting*.** The Board shall try to act by consensus. However, the act of the majority of the Directors present and voting at a meeting at which a quorum is present shall be the act of the Board unless the act of a greater number is required by law or these Administrative Policies and Procedures.

E. ***Ex Officio Members of the Board***. Ex Officio Members shall receive notice of meetings of the Board and be permitted to present information to the Board, serve on one or more committees and debate issues and ask questions during Board meetings. However, Ex Officio Members shall be non-voting members of the Board, shall not be permitted to make or second motions, shall not be eligible to attend "executive session" portions of Board meetings, and shall not be eligible to hold a Board office. The Following Officials shall serve as Ex Officio Members of the Board:

1. **City Officials:** The City Manager and the City Council District Representative representing the Downtown area.

2. **County Officials:** The County Commissioner representing the Downtown Area.

3. **Chambers of Commerce Officials**: The CEOs of the Greater El Paso Chamber of Commerce and the El Paso Hispanic Chamber of Commerce.

4. **State Official**: the District Representative representing the Downtown area.

G. ***Compensation*****.** Neither Directors nor Ex Officio Members shall receive salaries or compensation for their services as Directors/Ex Officio Members of the Board.

Section 4: Board Committee Structure

A. ***Executive Committee***

1. An Executive Committee will be composed of the President, Vice President, Treasurer and Secretary of the Board and other Directors designated in writing by the DMD President shall meet as necessary to provide guidance for the day-to-day operation of the DMD. The Chair of the Executive Committee is the President of the Board.

2. The Executive Committee responsibilities are to serve as a governance body for the organization; provide guidance and feedback to the Executive Director on day-to-day operational matters and on strategic goals of the organization.

3. The Executive Committee will not deliberate, alter policy, or change any part of the Service Plan of the DMD. Any such action will be taken only as part of an Open Meeting of the Board of Directors, in accordance with the Texas Open Meetings Law. Should any Executive Committee meeting require posting under the provisions of the Open Meetings Law, such as an emergency personnel action, the Executive Committee meeting will be posted and open, and any such posted emergency action will be additionally posted for ratification by the Board of Directors as soon as practicable following the Executive Committee action.

B. Finance Committee

1. A Finance Committee will be composed of the Treasurer, who serves as the Committee Chair, and at least two other Directors.

2. The Responsibilities of the Finance Committee are to: prepare and recommend an annual budget for the organization, expense review, check and balances, accounting/reporting oversight, provide investments reports as mandated by law, recommend adoption of an investment policy annually, and recommend a firm to the BOD to conduct the annual audit.

3. The Finance Committee will not deliberate, alter policy, or change any part of the Service Plan of the DMD. Any such action will be taken only as part of an Open Meeting of the Board of Directors, in accordance with the Texas Open Meetings Law.

C. *Other Committees*.

1. The Board may adopt resolutions establishing such committees as shall be deemed necessary, delegating specified authority to each such committee, and appointing or removing members of each such committee.

2. Each committee shall consist of no less than three members, and shall be appointed by the Executive Committee. The Board may establish qualifications for membership on a committee.

3. Committee Chairpersons will be appointed by the Board President. The Board may delegate to the Chairperson its power to appoint and remove members of a committee that has not been delegated any authority of the Board.

4. The establishment of a committee or the delegation of authority to it shall not relieve the Board or any individual Director of any responsibility imposed by Administrative Policies or otherwise imposed by law at the budget adopting resolution.

5. At-large committee members—who are not Directors—can be appointed by the Board to serve to represent additional Downtown Stakeholders. These additional committee members shall provide experience and expertise in varying service areas to complement and enhance the work of the Committees and the District.

6. Committees will not deliberate, alter policy, or change any part of the Service Plan of the DMD. Any such action will be taken only as part of an Open Meeting of the Board of Directors, in accordance with the Texas Open Meetings Law.

Section 5. DMD Personnel

A. The Board shall hire, supervise, evaluate, and, if necessary, terminate the employment of the ED.

B. The ED shall hire, supervise, evaluate, and, if necessary, terminate all other staff of the District. To the extent the Board desires to suggest that tasks be performed or projects undertaken by DMD personnel, the Board's direction shall be given to the Executive Director. The Executive Director, in turn, will direct the DMD's personnel. The staffing table shall be as approved in the annual budget approved by the Board of Directors.

C. The DMD may have employees or contractors who are provided by:
   1. direct employment by the DMD;

2. “shared” agreements with other private or governmental entities;
3. “loaned” by means of interlocal agreements with other public entities, such as the City of El Paso; and
4. any other methodology legally allowed, such as staffing arrangements, so long as such employment or agreement is in the best interest of the DMD and approved by the Board.

D. All “shared” or “loaned” personnel of the District will maintain their employment relationship with their other employer-entity, abide by the terms and conditions of the Agreement between the DMD and the other employer-entity, as applicable, and be supervised by the ED. In the absence or incapacity of the ED, such personnel will be supervised by the President of the Board, or such other officer as the President, or the Board as a whole, directs.

E. For “shared” or “loaned” personnel who divide work time between the District and another employer-entity, such personnel will keep and maintain accurate time sheets to divide their time between their work or services for their other employer-entities and work or services on behalf of the DMD. Compensation will be based on established rates and allocations that will be adjusted from time to time to reflect actual time allocated.

F. Rates of compensation and fringe benefits for administrative and managerial employees of the District will be reviewed annually by the DMD Executive Committee and the DMD Finance Committee and, to the extent required, pursuant to any agreements with other governmental entities. The DMD Executive Committee shall ensure that the rate of compensation and value of fringe benefits fall within the generally accepted range of compensation and benefits offered by public and private employers within El Paso County, Texas.

G. The DMD’s policy is to provide equal employment and economic opportunity at every level without regard to race, color, religion, sex, age, disability, national origin, or any other protected classification by law.

H. District personnel are required to conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting DMD’s business; and that impropriety or the appearance of impropriety be avoided to ensure and maintain public confidence.

J. A Employee Handbook is provided to all employees; employees must sign an acknowledgement form indicating compliance with the Rules and Regulations of such manual.

K. All office and managerial personnel shall be trained on (1) the Texas Open Meeting Act Training on a biannual basis and (2) the Texas Public Information Act (Open Records) during their first 90 days of employment with the DMD.

Section 6. Code of Ethics

A. Policy and Purposes

1. The Board, Officers, and Personnel will conduct themselves in a manner consistent with sound business and ethical practices.

2. The public interest always will be considered in conducting corporate business.

3. Impropriety and the appearance of impropriety will be avoided to ensure and maintain public confidence in the District.

4. The Board will establish policies to control and manage the affairs of DMD fairly, impartially, and without discrimination.

5. The Code of Ethics is adopted for the following purposes: (a) to comply with Section 49.199 of the Texas Water Code; (b) to encourage high ethical standards in official conduct by DMD Directors and Officers; and (c) to establish guidelines for such ethical standards of conduct.

6. The Code of Ethics supplements federal, state, and/or local laws – including common law – applicable to the DMD Directors and Officers. To the extent applicable law imposes a higher or greater ethical/conflict standard than this Code of Ethics, the higher or greater ethical/conflict standards will govern.

7. All new Directors will receive training on the Code of Ethics within 90 days of their appointment to the Board. Thereafter, all Directors will receive training on the Code of Ethics at least once every three years.

B. Qualification of Directors

1. A person shall not serve as a Director if he or she is disqualified by law from doing so.

2. To be qualified to serve as a Director, a person must be 18 years old and be:

    a. A resident of the District;

    b. An owner of property in the District;

    c. An owner of stock, whether beneficial or otherwise, of a corporate owner of property in the District;

    d. An owner of a beneficial interest in a trust that owns property in the District; or

e. An agent, employee, or tenant of a person covered by items (b), (c), or (d) above.

C. Participation of Directors

1. In accepting nomination to be a Director, a person understands the obligation of his or her service and responsibilities pursuant to the position including participation in meetings of the Board. Attendance requirements are outlined in Section 3, B., 2 of this document.

D. Conflicts of Interest

1. Although Chapter 171 and Section 375.072(a) and (b) of the Texas Local Government Code provide that a Director may participate in all votes pertaining to business of the District regardless of any other statutory provision to the contrary, a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefited by the action except as provided in subsection 3 below. A Director has a substantial interest in a business: (a) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of $15,000 or more of the fair market value of the business entity, or (b) if the business entity provides more than ten percent of the Director's gross income. A Director has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more. An interest of a person related in the second degree by affinity or consanguinity to a Director or officer is considered a substantial interest.

2. A Director who has a substantial interest in any matter involving the business entity or real property shall, before a vote or decision on the matter, disclose that fact to the other Directors by affidavit. The affidavit must be filed with the Secretary of the Board.

3. A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the District will receive a similar pecuniary benefit.

4. An employee of a public entity may serve on the Board, but that public employee may not participate in the discussion or vote on any matter regarding assessments on or contracts with the public entity of which the Director is an employee.

D. ***Acceptance of Gifts.*** A Director or Officer may not solicit or accept any benefit from a person or business entity the Director or Officer knows is interested in or likely to

become interested in any contract, purchase, payment, claim, or transaction involving the exercise of their discretion, or any matter before the board for any decision, opinion, recommendation, vote, or other exercise of discretion in carrying out his official acts for the District as prohibited by law. As of the date of adoption of this Code of Ethics, Section 36.08, Texas Penal Code, a copy of which is attached as Appendix "A", prohibits gifts to public servants such as the Directors. Section 36.08 does not apply to the matter set forth in Section 36.10, which is attached as Appendix "B". Violations of penal laws may subject Director or Officer to criminal prosecution.

F. ***Bribery*.** A Director or Officer shall not intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept, or agree to accept from another any benefit as consideration when to do so is prohibited by law. As of the date of adoption of the code of Ethics, Section 36.02, Texas Penal Code, a copy of which is attached as Appendix "C", lists the offenses that are considered bribery when committed by Directors or Officers. Violations of penal laws may subject a Director or Officer to criminal prosecution.

G. ***Nepotism*.** The Board shall comply with all anti-nepotism laws applicable to municipal management districts. As of the date of adoption of this Code of Ethics, Chapter 573 of the Texas Government Code, a copy of which is attached as Appendix "D", is the anti-nepotism law governing municipal management districts. This law provides that a Director of the DMD may not appoint or vote for the appointment of a relative as an employee of the DMD. A violation of this law would result in removal of the Director and a possible criminal misdemeanor offense.

Policies and Procedures

The following sections contain the Policies and Procedures of the DMD. These Policies and Procedures have been adopted by the Board to ensure that the procurement, accounting, financial, and other key operations of the DMD are conducted in accordance with the highest and best practices for both business entities and governmental organizations.

Section 7. Fiscal Policies and Procedures

A. *Accounting Procedures*

1. ***General.*** This section covers basic accounting procedures for the El Paso Downtown Management District (DMD). The accounting procedures used by the DMD shall conform to Generally Accepted Accounting Principles (GAAP) to ensure accuracy of information and compliance with external standards. Throughout the fiscal year, expenses are accrued into the month in which they are incurred. The books are closed no later than the second Friday after the end of the previous month. Invoices received after closing the books will be considered a current-month expense. At the close of the fiscal year this

rule is not enforced. All expenses that should be accrued into the prior fiscal year are so accrued in order to ensure that year-end financial statements reflect all expenses incurred during the fiscal year. Year-end books are closed no later than 90 days after the end of the fiscal year. Revenue is always recorded in the month in which it was earned or pledged.

2. ***Basis of Accounting.*** The DMD uses the accrual basis of accounting.

3. ***Assessment Receipts.*** Assessments will be transferred from the Tax Assessor/Collector to a DMD account. The Tax Assessor/Collector sends the DMD a deposit notice by e-mail and summarized reports by mail. The amount denoted in the e-mail must be entered as a Deposit (debit) in the DMD QuickBooks (QB) accounting software program and into the WestStar Bank business checking account. The offsetting credit entry is Assessment Income.

4. ***DMD Receipts including wire transfer advice emails (assessment income from the City Tax Assessor-Collector).*** Incoming checks and copies of wire transfer advices (received by Office & Project Coordinator (OPC) via email) are logged daily. The wire transfer advice emails, checks, cash and original documentation are recorded in a Deposit Memo which describes to which bank account the wire transfer has been or the check will be deposited. The Executive Director (ED) must review the Deposit Memo and sign it. The OPC will prepare the deposit slip and deliver the deposit to the bank. A detailed copy of the deposit slip, Deposit Memo and deposit receipt are filed in the Accounts Receivable (A/R) filing system for the current Fiscal Year. The offsetting entry would be to the corresponding specifically labeled income account.

5. ***Vendor and Contractor Payments.*** DMD will establish accounts with vendors when appropriate. Such purchases are to be correctly classified and accounted for within the QB accounting program. Vendors will be procured following the procedure outlined in the Procurement Sections G. H. and I. of this Section 7. Fiscal Policies and Procedures. Contractors will be procured in the same manner. Authorization codes will be assigned to expenditure items/vendors and contractors approved by the DMD Board of Directors (BOD). Invoices received by mail are tracked with a date stamp by the OPC. The OPC files them as pending until they are ready for payment processing. The invoices are processed for payment by the OPC according to the following procedure:

    a. Vendors will be paid only upon submission of a finalized invoice/statement. All DMD invoices are to be referred to the OPC upon receipt. Payables are processed twice monthly on or about the 10th and 25th of each month.

    b. The OPC will review invoices, written progress reports from service providers, sales receipts and other evidence to confirm that materials

or services were in fact provided. The OPC will contact vendors or service providers to have questions answered and ensure the accuracy of the invoice. Contracts will be monitored for progress toward completion and adequacy of available funds. If an invoice is correct and in line with a contract that has BOD authorization, the OPC will record the invoice in QB. The OPC will then use QB to generate a check.

c. The OPC compiles the invoices, and/or receipts and other pertinent backup and recaps the invoices to be paid on the Expenditure Request Form. This Form lists the expense description, the Payee, the amount of the payment, the corresponding annual budget total for the particular budget category and the budget amount remaining once payment of the item is made. Invoices and any other back-up must be attached to the Expenditure Request Form.

d. The ED will review the Expenditure Request Form and authorize by providing signature and date.

e. Once the ED has signed the Expenditure Request Form, checks are then QB generated based on those expenditures that have been approved. A different authorized signer on the WestStar Bank business checking account is presented with the printed checks along with the corresponding approved Expenditure Request Form and its related invoices/backup documentation to provide signature to each check.

f. The OPC must make a copy of each signed check. The check copies, the Expenditure Request Form, invoices, statements and receipts, are filed in the Accounts Payable (A/P) filing system for the current fiscal year.

B. *Journal Entries*

1. Journal Entries include, but are not limited to, Payroll service charges, service fees and recording of bank and investment account interest, DMD debit card transactions, and payroll and payroll tax distribution required to produce a "cost-center" formatted budget. Each journal entry must include a description of its purpose. QB references each cost center as "Class".

2. Journal entries are posted in QB accounting program as necessary throughout the corresponding month by OPC to complete close of monthly financials. A monthly Journal report is generated, reviewed and signed by the ED in approval.

3. The signed report will be filed in the Financial Records filing system for the current fiscal year.

C. *Bank Reconciliation*

1. Electronic bank statements will be printed by OPC once available via WestStar Bank online access and will be provided to ED for review. Following review, the ED will initial the statement.

2. Bank statements should include a photocopy of the front and back of each returned check which are available via online access.

3. Once all bank statements, debit card statements, payroll reports, investment account statements and deposit receipts have been made available and/or received the OPC will proceed with monthly reconciliation. Bank account reconciliation reports are then processed and printed.

4. The ED will review and approve reconciliation reports by signing and dating them.

5. The reconciliation reports will be presented to the FC on a monthly basis. The Treasurer, or a FC Committee member in the absence of the Treasurer, will review and approve reconciliation reports, including bank statements, by signing and dating them.

6. Reconciliation reports are to be filed in the Financial Records filing system of the current fiscal year.

D. *Monthly Close*

1. Books are closed no later than the second Friday after the end of the previous month and a monthly financial summary is presented to the Finance Committee (FC) and BOD every month in the form of a Balance Sheet, monthly and year-to-date Profit & Loss statement as compared to the approved budget.

E. *Recordkeeping*

The organization uses a variety of categorizations to organize its financial documents and information.

a. Monthly bank statements are kept in the fiscal year's Financial filing system along with each monthly reconciliation report. These records are kept for 7 years.

b. A/P records are maintained in the A/P filing system for the current fiscal year. The A/P records include approved Expenditure Request Forms, copies of signed checks, back-up invoices, receipts or statements filed in corresponding vendor labeled files.

c. A/R records include invoices billed to DMD's customers and payment requests submitted to the City of El Paso or others filed in the A/R filing system in corresponding customer labeled files to include timely accounting of the status of A/R items.

d. Bank Statements, Monthly Profit and Loss and Balance Sheet Reports, Deposit correspondence, TexPool statements, Certificate of Deposit statements, Tax Distribution Reports, Quarterly Public Finance Information Act reports and other correspondence sent by the financial institutions with which the DMD conducts business are filed in corresponding area of the filing system.

e. Filing is done on a weekly basis by the OPC.

f. All financial records are archived in the filing system until they reach the 7 year requirement.

F. *Internal Controls*

The organization employs several safeguards to ensure that financial transactions are properly authorized, appropriated, executed and recorded.

1. ***Lines of Authority***

a. The DMD BOD reviews all policies and procedures annually. The ED reviews proposed amendments to any such policies and must submit them to the Executive Committee (EC) for review and recommendation before the proposed items are submitted for BOD approval. BOD approval is mandatory.

2. ***Expenditure Limits and Approval Requirements.***

a. The ED has the capacity to approve expenses under $2,500.00 unless the expense is incurred using the debit card at which point the limit is $1,000.00 as long as the item is within the approved budget line-item total.

b. If the expense exceeds $2,500.00, or the debit card charge exceeds $1,000.00 the ED must obtain approval from the EC. The EC can approve expenses up to $7,500.00 if within an approved budget line item total.

c. If the expense exceeds $7,500.00 and is not within an approved budget line item total, the ED must obtain approval from the EC, who must then recommend the expense to the BOD.

d. Any expenditure of funds that exceed its approved budget or budget line item by 15% and $5,000.00 must return to the BOD for approval.

e. The BOD must approve Grant Program Awards.

f. The Board President, or an elected officer in the absence of the President, may enter into Contractual obligations less than 12 months in duration or below $7,500 in value.

g. The BOD approves entering into Contractual obligations beyond 12 month in duration or below $7,500 in value.

h. Fiscal policy and yearly budgets are reviewed and recommended by the FC. The BOD approves any amendments to the Fiscal Policies and Procedures.

G. ***Procurement and Contract Administration***

1. It is the intent to obtain the highest quality, most cost-effective goods and services.

2. As to services, factors such as experience and cost effectiveness shall be taken into consideration.

3. It is the intent of DMD to stimulate the growth of Disadvantaged Business Enterprises (DBE) inside its boundaries by encouraging the full participation of DBE's in all phases of its procurement activities and affording DBE's a full and fair opportunity to compete for DMD's contracts. (See Section H, Item 8.).

H. ***General Procurement Process***

1. A Request For Proposal (RFP) is prepared.

2. A current list of DBE's is obtained from the City.

3. Qualified potential bidders are identified, including DBE's.

4. Identified bidders are mailed RFPs that comply with competitive bidding requirements of Section 375.221 (b) of the Texas Government code. If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than $15,000.00 but less than $25,000.00, or for a duration of more than two years, competitive bids shall be requested from at least three individuals/entities.

5. A pre-bid conference is held to be attended by interested potential bidders, but attendance is not mandatory.

6. Proposals or bids are received before a strictly enforced deadline and no exceptions are allowed. Receipts of Proposals or bids are logged in.

7. DMD staff reviews proposals and bids and makes a recommendation to the appropriate committee of the DMD.

8. The DMD committee reviews the recommendations, and it concurs or rejects the recommendations. If it concurs, the committee makes its recommendation for BOD or EC approval. If it rejects, then staff makes proposals and bids available for committee review or repeats the RFP process.

9. After approval by the BOD or EC, authorized officials of DMD sign contracts.

10. All RFPs will state that DMD will have the right to accept or reject any and all bids; to choose the lowest, best, or most responsive bidder; and to make decisions that are final, including action to terminate the procurement process.

I. *Specific Procurement Guidelines*

1. Less than $15,000 (annually):

    a. Staff may purchase without using the process outlined in Section H above.

    b. Comparative pricing and examination of qualifications are encouraged; on purchases of more than $1,000, this action is required.

    c. DBE vendors are identified and are included in comparative pricing.

2. More than $15,000 (annually):

    a. Process outlined in Section H above is used.

    b. Notice of the contract for which bids are being requested is published once a week for two consecutive weeks in a newspaper of general circulation in downtown El Paso. The first publication must be not later than the 15th day before the due date.

    c. The above procedure notwithstanding, the DMD BOD may waive competitive bid requirements in the event: Of an emergency; in the event that materials needed are available from only one source; in the event of a procurement that will require supplier or third party design, competitive bidding would not be appropriate, and competitive

negotiation, with proposals solicited from an adequate number of qualified persons, would permit reasonable competition consistent with the nature and requirements of the procurement; and in the event that after good faith efforts of solicitation, it is ascertained that there will be only one bidder.

d. For services, monitoring of contracts should occur monthly. The OPC will work with personnel to prepare written quarterly status reports to the FC for review.

e. Contracts and agreements with contractors or vendors shall provide conditions/provisions under which contracts may be terminated and faulty products or unprofessional service can be returned or remedied.

f. For purchases made involving the use of federal, state, or grant funds, the DMD will comply with specific guidelines of the funding entity

J. *Conflict of Interest*

Upon or before hire, election, or appointment each employee and BOD member must provide a full written disclosure of all direct or indirect financial interests that could potentially result in a conflict of interest.

1. A local government officer shall file a conflicts disclosure statement if:

a. the person enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the person; and the person:

i. has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that a contract has been executed; or the local governmental entity is considering entering into a contract with the person; or has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $250 in the 12-month period preceding the date the officer becomes aware that: a contract has been executed; or the local governmental entity is considering entering into a contract with the person.

b. A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement

2. A local government officer commits an offense if the officer knowingly violates this section. An offense under this subsection is a Class C misdemeanor.

a. Should there be any dispute as to whether a conflict of interest exists: The ED shall determine whether a conflict of interest exists for an employee, and shall determine the appropriate response.

b. The BOD shall determine whether a conflict of interest exists for the ED or a member of the BOD, and shall determine the appropriate response.

K. Segregation of Duties

The organization's financial duties are distributed among multiple people to help ensure protection from fraud and error. The distribution of duties aims for maximum protection of the organization's assets while also considering efficiency of operations.

1. **Procedures**

a. Bank statements are retained by the OPC to close the books.

b. Credit card statements are retained and reconciled by the OPC.

c. Personnel Files are stored and maintained by the ED / OPC.

d. The OPC creates a Deposit Memo of all check amounts to be deposited. This must be reviewed and approved by the ED before the checks are deposited. Checks are deposited within the week of their receipt.

e. The OPC creates a Deposit Memo for each wire transfer deposited. This is reviewed by the ED.

f. Blank checks are kept in a locked cabinet drawer by the OPC. Only ED has a copy of the key to cabinet.

L. Debit & Credit Cards

The ED has access to a WestStar Bank business checking account debit card established since June of 2015.

a. The ED can make purchases of up to $1,000.00 at a time if the expense is within an approved budget line-item total.

b. The ED is authorized to conduct purchases using the debit/credit card.

M. Checks & Accounting Software

a. Checks are kept in the OPC office in a locked cabinet drawer by the OPC. Only ED has a copy of the key to cabinet.

b. Voided checks are filed in the current fiscal year's Financial Records filing system. The signature line is "VOID" marked through on all voided checks.

c. The DMD uses the most recently purchased available version of QuickBooks as its accounting software. Only the OPC and the ED have password access to the software.

Financial Planning & Reporting

N. Budgeting Process

The organization's annual budget is prepared and approved annually. The budget is prepared by the ED in conjunction with the OPC, FC and the EC. The budget is to be approved by the BOD prior to the start of each fiscal year. The budget is revised during the year only if recommended by the FC and approved by the BOD. The entire Budget Process is spelled out in Section 9.

O. Internal Financial Reports

The organization prepares regular financial reports on a monthly basis. All reports are finalized no later than 30 days after the close of the prior month.

a. The OPC is responsible for producing the following year-to-date reports within 30 days of the end of each month: Statement of Profit and Loss as compared to the current year's budget and the Balance Sheet accompanied by a subsidiary narrative report.

b. The ED, the OPC, and FC review financial reports each month, and the FC presents reports to the full BOD on a quarterly basis.

c. The FC Chair narrates the financial standings at every BOD meeting and should a budget variance require explanation, either the ED or the OPC will narrate the explanation.

P. Audit

Every year the organization undergoes an audit. The auditing firm is chosen by RFP/RFQ and the organization has the option to renew the contract after the initial term.

1. Procedures

a. The audit is to begin in November of every year and to be completed no later than the following January 15th.

b. The FC has been tasked with reviewing and recommending the auditing firm via RFP/RFQ and recommending a firm to the BOD for their approval.

c. The OPC serves as the staff liaison to the audit firm.

d. Upon completion, a representative from the auditing firm presents the report to the BOD.

e. The audit report is made available to the public via the Public Information Act per Chapter 552 of the Government Code.

f. Any journal entries for the audited year are to be posted no later than 30 days after acceptance of the audit report by the FC and BOD.

Q. Tax Compliance

1. Exempt Organization Returns

a. The ED is responsible for assigning the completion of tax forms to the OPC before the Federal Tax filing deadline.

b. OPC processes the bi-weekly payroll after input of employee information. OPC files quarterly payroll tax reports (941 and DE6) meeting scheduled deadlines. The OPC is responsible for ensuring accuracy and timeliness.

c. The OPC submits the quarterly Texas Taxable Wages report to the Texas Workforce Commission meeting the scheduled filing deadline of within the 30 days after the end of each calendar year quarter.

R. Revenue and Accounts Receivable

1. Invoice Preparation Policy

The organization depends on several revenue streams that are captured through invoices, electronic deposits and billable time. Much of the cash flow is governed by terms set in interlocal agreements and contractual obligations. To maintain a healthy cash flow, all other invoices not governed by interlocal agreements are created and disbursed as soon as accurate information for the billable item is confirmed, finalized and compiled.

a. Procedures

i. The Office and Project Coordinator gathers relevant expense documentation (e.g. receipts or purchase orders) and creates an invoice.

ii. The OPC issues the invoice to the client/customer, and one copy is filed in the A/R filing system.

iii. The ED reviews any and all outstanding invoices and alerts the FC of invoices more than 90 days overdue.

iv. The ED and OPC determine appropriate collection efforts.

v. The FC must write off outstanding debt after collection efforts fail.

2. Revenue Recognition

All contributions will be recorded in accordance with GAAP, with specific attention to standards FASB 116 and 117. Contributions are recorded as pledged or received in accordance with FASB 116, and must be credited to the appropriate revenue lines as presented in the annual budget and coded as designated in the organization's Chart of Accounts.

a. **Procedures**

i. The ED reviews all revenue and when necessary determines how it will be recorded.

ii. The OPC is responsible for correctly posting the transaction in QB after approval from the ED.

iii. Funds generally come into the account via wires from the City of El Paso. Other sources of income are received in check form and will be properly logged in by the OPC. OPC stamps copy of check payment with date received stamp.

iv. All mail received is handled by OPC.

v. Invoices/payables are filed in the pending invoice folder until they are ready to be paid and checks payments are filed in the deposit folder.

vi. All deposits to be made are approved by the ED by signature upon presentation of the check and its deposit detail and documentation via a prepared Deposit Memo (as previously described in Section 7, A., 4).

vii. Deposits are made within the week of receipt of the check payment.

viii. The bank deposit receipt is then stapled to the Deposit Memo and its back up documentation.

ix. The OPC is responsible for correctly recording the deposit in QB.

x. All bank documentation is filed in the A/R filing system.

3. Expense & Accounts Payable

a. Procedures

i. The organization pays all bills, invoices and payables with checks and the WestStar Bank issued debit card.

ii. Authorized signers of checks include the DMD President, Vice President, and Treasurer.

iii. Payables are compiled and processed on a bi-monthly basis by the OPC (on or about the 10th and 25th of each month) and are provided for review to the ED for approval via preparation of the Expenditure Request Form including all required documentation. Once the expenses have been reviewed, the ED approves by providing signature.

iv. Checks are then generated based on the approval of the expenses included on the Expenditure Request Form. The checks are then presented to an authorized signer. A copy of each signed check is made for recordkeeping purposes.

v. Once the proper signatures have been obtained, the OPC stamps the invoice/bill paid, records the check number, check date and attaches the check copy to the invoice/bill and files in the A/P filing system.

vi. Checks are mailed out via regular mail, hand-delivered or picked up by Payee when necessary.

S. Investment Fund Management

While maintaining compliance with the Investment Policies prescribed in Section 14 of this document, the DMD requires the ability to manage investment funds on a short term basis to achieve a higher interest rate yield, while also supporting day to day operations of the organization.

a. Procedures

i. Based on monthly income and expense activity, the OPC calculates the amount and when fund withdrawal/deposit from operating and investment accounts become necessary.

ii. A DMD Funds Management Transfer Transaction Request is completed, including a description of the funds transfer purpose and backup documentation for the record when required.
iii. ED provides prior approval signature to Request.
iv. OPC initiates and completes withdrawal and/or deposit transfers between investment and operating accounts. In the OPC's absence, established signers on the investment and operating accounts are authorized to manage account funds.
v. OPC enter corresponding journal entries into QuickBooks accounting program.

T. Payroll

Exempt employees are expected to work at least 40 hours per week. When using accrued leave, exempt employees are required to submit an approved Leave Request Form to the OPC during the pay period in which the leave was used. Hours logged for payroll submission are to correspond with predetermined allocated percentages per DMD program. Non-exempt employees are required to record time worked for payroll and cost allocation purposes, and submit them to the OPC on a bi-weekly basis. Hours logged for payroll submission are to correspond with predetermined allocated percentages per DMD program.

a. The DMD operates on a bi-weekly payroll schedule with 26 pay periods.

b. The OPC is responsible for entering information into the payroll and accounting systems as needed.

c. All paid time-off balances are maintained within the payroll system, based on accrual formulas and use of leave.

d. Any routine processing payroll additions, deletions and changes may be made by the OPC as necessary.

e. The ED has the authority to approve payroll changes and is done so with a Memo to the employee file or with approval from the EC with a Memo on file.

f. Any salary increases for staff within the approved budget line, other than the Executive Director, are established by the Executive Director and reviewed by the EC. Any salary increases for the Executive Director within the approved budget line, must be recommended by the EC to the full BOD for approval.

g. Employees may request payroll changes (i.e. changes to withholdings) once a year or upon a life changing/ qualifying event (marriage, divorce, new dependent) via a written Memo to the ED. It shall be policy of DMD

not to incur overtime. All overtime must be pre-approved by ED with review by EC and FC.

h. Accrued vacation paid time off, sick pay, etc. will be paid in accordance with the guidelines outlined in the employee handbook and only with prior written request and approval of the ED.

1. **Payroll Preparation & Approval**

a. Every other Tuesday of the month payroll is entered by the OPC.

b. The OPC has primary responsibility for entering payroll, and the ED serves as the backup for payroll entry should the OPC be out.

c. All timesheets for non-exempt (hourly employees) are approved and signed by the ED and are filed in the corresponding Payroll Reports file by the OPC.

d. The ED reviews the payroll register to ensure accuracy.

2. **Pay Upon Termination**

a. DMD and its employees share a working relationship defined as employment-at-will. Simply stated, employment-at-will means that in the absence of a specific written agreement, you are free to resign at any time, and DMD reserves the right to terminate your employment for any reason (which does not violate any applicable law) with or without prior notice.

b. Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are a few examples of some of the most common circumstances under which employment is terminated:
   i. Resignation - voluntary employment termination initiated by an employee.
   ii. Termination - involuntary employment termination initiated by DMD.
   iii. Layoff - involuntary employment termination initiated by DMD for non-disciplinary reasons.

c. If an employee wishes to resign, employee is requested to notify the ED of the anticipated departure date at least two weeks in advance. Accrued vacation time will only be paid upon resignation if two weeks' notice is provided. Of course, as much notice as possible is appreciated by DMD and your coworkers. This notice should be in the form of a written statement. Upon resignation, DMD reserves the right to change the last day of work for the employee.

d. In the case of termination due to resignation, retirement, or permanent reduction in the work force, accrued vacation pay will be paid on a pro-rata basis up to five vacation days (example – if an employee worked 6 months they are eligible for one-half of their vacation time), providing at least a two week written notice is given.

e. Unused sick time is not paid upon termination. In the case of termination, any vacation or personal/sick time used in excess of accrued time will be deducted from the final paycheck given prior written permission.

f. Furthermore, any outstanding financial obligations owed to DMD will also be deducted from the final paycheck given prior written permission included in the receipt of employee handbook.

g. A meeting between the employee and the ED will take place prior to the last day of work. Office keys and any agency tools or equipment must be returned at this time with the return of said items documented and signed by both employee and ED.

h. If departure from the DMD is in good standing, a former employee may be considered for re-employment.

i. The OPC is responsible for calculating final paychecks and ensures accuracy of any accrued Paid-Time-Off to be paid.

j. The final paycheck will be mailed to the employee's last known address on file unless an alternate method of delivery has been requested by the employee with 10 business day notice to the ED.

U. Cash Handling Policy

a. The acceptance of monies will be limited to the Office & Marketing Assistant (OMA), the Office & Project Coordinator (OPC), and the Executive Director (ED).

b. All incoming monies should be acknowledged by receipt when accepted or received by mail, and forwarded to the OPC for processing within one business day, and include a completed receipts record form.

c. The OPC is responsible for depositing the monies in compliance with Section 7, R, 2.

d. Monies should never be unattended unless appropriated secured in a locked place.

e. Cash received must not be used for making change, petty cash purposes, etc. Expenditures or refunds cannot be made from cash receipts.

f. For overnight storage and during other periods when cash is not being used, it should be kept in a safekeeping device by the OPC.

g. Under no circumstances should an individual keep DMD cash with their own personal funds, deposit DMD funds in a personal bank account or take DMD funds to one's home for safekeeping.

V. Employee Expense Reimbursements

a. It is the employee's responsibility to prepare and submit an Expense Report to receive reimbursement for business related expenses. Expense Reports and purchase orders should be submitted on at least a monthly basis to insure proper matching of expenses with the appropriate accounting period.

b. Employees may be reimbursed for supplies, items or objects that have been pre-approved for purchase by the ED.

c. All claimed expenses must have an original receipt. All Expense Report forms must be signed by the employee and the ED before being submitted for processing.

d. Items past 60 days from date of purchase are no longer eligible for reimbursement.

e. Once an expense report has been deemed in order, approved and signed, it is presented to the OPC for processing with the upcoming payables cycle.

1. Travel Expenses

DMD will reimburse employees for all necessary and reasonable travel expenses related to the normal conduct of business. To administer uniform guidelines for reimbursement of business related travel the following policies and procedures have been established. While this policy provides many answers and useful guidance, it cannot address every possible situation. Any questions regarding the business nature and/or reimbursement of such expenses are to be addressed to the ED **before** committing to the expenditure of any funds. The most useful guide to cost effective business travel is for the employee to spend money as if it were their own.

2. Auto Allowance/Mileage

a. Employees receive reimbursement for direct business mileage. Employees may receive direct mileage reimbursement based on the use of their personal automobile for purposes of conducting DMD business. Auto allowances are paid on a monthly basis. Direct mileage is reimbursed at seventy-percent of the IRS business mileage reimbursement rate and is paid upon submission of a signed and supervisor approved "Mileage Report" form.

b. Because it is more cost effective than direct mileage reimbursement, DMD prefers that employees rent an automobile if round trip mileage on a business trip will be more than 200 miles. Also, the use of a personal automobile for business related travel is only authorized if the automobile is covered by a current insurance policy. Any damages, repair costs, and/or maintenance costs incurred by an employee in the use of their privately owned vehicle in conjunction with DMD business is the sole responsibility of the employee.

3. Air Travel

Reservations for all domestic air travel can be made by the employee either on line or directly with the various airlines. It is expected that employees make every effort to minimize the cost of air travel, including considering Saturday night stays or departures out of airports and preparing in advance to maximize discounts.

4. Lodging

The selection of overnight lodging should be guided by considerations of safety, quality and reasonableness of room rates. When rooms are guaranteed for late arrival and the trip is cancelled or other lodging is secured, the reservation must be cancelled to avoid being billed for a "No Show." Hotels may require either a 24 or 48-hour cancellation notice to avoid these charges. The cost of in-room movies or services is not reimbursable.

5. Business Meals

Employees will be reimbursed for reasonable and actual expenses for meals incurred while on business trips away from their normal business hours. All original receipts must be included with the employee's travel and expense report. Any employee expense report received without the receipts will be returned to the employee. Only reasonable meal expenses will be reimbursed. All business meals while not traveling must be approved by ED in advance. Personnel lunches not approved in advance by the ED will not be reimbursed.

V. Capital Equipment

a. The Operations Manager is responsible for the maintenance, the inventory and the service schedules of the DMD's capital inventory.

b. A Straight Line Depreciation method is used to depreciate all Capital Inventory unless otherwise noted by the ED. The OPC maintains the DMD depreciation schedule by journal entries as part of each September monthly closing.

c. Once capital expenditures are considered excess inventory, all items are first listed on a government surplus auction website such as Government Auctions.com, or similar websites. If the assets are not able to be auctioned, then the DMD will attempt to sell the inventory locally as a second option. If the inventory still does not sell the ED seeks the permission from the EC to donate the excess inventory to a not-for-profit organization.

d. A list of all equipment owned by DMD must be kept current. Any lost or stolen items must be reported to ED and FC for future action.

W. Operating Reserve

a. The target minimum operating reserve fund for the organization is three (3) months of average operating costs. The calculation of average monthly operating costs includes all recurring, predictable expenses such as salaries and benefits, occupancy, office, travel, program, and ongoing professional services.

b. The amount of the operating reserve is calculated each year based on current fiscal year operating expenses, reported to the FC and BOD, and included in regular financial reports.

c. The operating reserve will be funded with surplus unrestricted operating funds.

d. The BOD may from time to time direct that a specific source of revenue be set aside for operating reserves. Examples may include one-time gifts or bequests, special grants, or special appeals.

e. The ED monitors the account on a weekly basis and the BOD is provided the account balance along with a copy of the previous month's financials. The FC is provided a copy of the expenditures at every monthly meeting from the operating account.

f. All funds should be maintained in an interest bearing account except what is needed on a monthly basis.

g. To use the operating reserves, the ED will submit a request to the FC of the BOD. The request will include the analysis and determination of the use of funds and plans for replenishment. The organization's goal is to replenish the

funds used within twelve (12) months to restore the operating reserve fund to the target minimum amount.

Section 8. Disadvantaged Business Enterprise Program

A. Goal.

The District shall attempt to stimulate the growth of DBEs inside the boundaries of the District by encouraging the full participation of DBEs in all phases of its procurement activities and affording those DBEs a full and fair opportunity to compete for District contracts.

B. DBE Defined.

DBE means "disadvantaged businesses" as defined by Section 375.003(4), Texas Local Government Code from time to time:

1. A corporation formed for the purpose of making a profit and at least fifty-one percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminating practices or similar insidious circumstances over which they have no control, including Black Americans, Hispanic Americans, Asian Pacific Americans, American Indians, and women;

2. A sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively one or more persons described by Paragraph (1) of this subparagraph;

3. A partnership that is formed for the purpose of making a profit in which fifty-one percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (1), and in which minority or women partners have a proportionate interest in the control, operations, and management of the partnership affairs;

4. A joint venture between minority and women's group members formed for the purpose of making a profit and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management interest in capital, and interest earnings, other than a joint venture in which minority group members own or control debt securities, leasehold interest, management contracts, or other interests;

5. A supplier contract between persons described in Paragraph (1) of this subdivision and a prime contractor in which the DBE is directly involved in the manufacture or distribution of the supplies or materials or otherwise in warehousing and shipping the supplies.

C. Certification. All DBEs for the purpose of this program must be certified by the City of El Paso, Metropolitan Transit Authority of El Paso and El Paso County (METRO); the El Paso Business Council; or Texas Department of Transportation (TxDOT).

D. Actions. The District shall attempt to stimulate participation of DBE's by the following:

1. It will periodically obtain and review relevant City of El Paso, METRO, El Paso Minority Business Council, El Paso Women's Business Council, and TxDOT listing of certified DBEs. It will familiarize itself with DBEs in relevant skills, trades, and services pursuant to the Service Plan.

2. In procurement processes, as qualified bidders are identified, it will identify at least three DBEs that will be mailed requests for qualifications, proposals, or bids (if available).

3. Advertisements for procurements will be placed in at least one publication of general circulation within the community.

4. Requests for procurements will plainly state the District's objective to stimulate the growth of DBEs and the conditions for certification of DBEs.

6. On purchases of less than $15,000, the District will identify DBEs and include them in comparative pricing.

7. The District will make itself available to answer questions of DBEs and to provide information as to how a firm may effectively compete for work of the District.

8. The District will keep records of the actions described above.

9. The District will review its DBE program each year.

E. Reporting. The Personnel shall compile its activities and results into an annual report of its actions to encourage DBEs. The report shall facilitate an annual review by the Board of its progress in DBE contracting. The report will be prepared within 120 days of the fiscal year end.

F. Review. The District will review its progress with respect to contracting annually no later than 150 days of the year end. Since there are relatively few procurements, the review must consider the performance of the District in general with respect to DBEs contracting rather than within a specific service or trade.

Section 9. Budgeting and Accounting

A. The fiscal year for the DMD begins on October 1 and ends on September 30.

B. The annual budgeting process will include the following:

1. June: Operating committees consider progress, goals, and initiatives for next year's budget and Service Plan Update. Personnel will prepare preliminary budgets following the El Paso Central Appraisal District's (CAD) publication of the preliminary assessment values.

2. July: President and Personnel prepare working draft budget for consideration by operating committees and by the DMD budget committee. All District property owners are invited to provide suggestions that could be incorporated into the budget and Service Plan Update.

3. August: Input is incorporated in a preliminary budget and Service Plan that is submitted to the Board for review.

4. The budget and Service Plan is approved by resolution of the DMD Board at the August meeting. The County Tax Assessor/Collector is notified of the assessment rates by September 15.

C. Budgets are adopted and reported on a basis consistent with generally accepted accounting principles. The DMD President is authorized to transfer funds between line items; however, the DMD Board must approve variations beyond ten percent within programs.

D. Financial records of DMD are kept in accordance with generally accepted accounting principles.

E. An annual audit of DMD funds should be completed by January 15 of each year by an independent accounting firm.

F. Funds including assessment will be deposited in an interest bearing account and/or interest bearing instruments consistent with the District's Investment Policy. (See Section 14).

G. With respect to additional Fiscal Matters, Section 7 delineates additional Rules, Policies and Procedures in detail to include:
a) Specific accounting procedures including Account Payables and Account Receivables processing
b) Monthly and Annual Reconciliation process
d) Bank accounts policies
e) Monthly and Quarterly Financial Reporting requirements

Section 10. Ownership of Property, Data, Equipment and Other Materials

A. The DMD may own property, equipment, fixtures, landscaping materials, data, and other materials required to accomplish its purposes. Unless the Board adopts a position to the contrary, it is the policy of the District to donate fixtures and materials attached to public rights of way and properties to the appropriate department of the City of El Paso. A condition of such donation may be DMD's maintenance of such fixtures.

B. All files, data, illustrations, maps, and similar material paid for by the DMD will be clearly labeled: "El Paso Downtown Management District" or some derivative thereof as to show ownership by the District.

C. DMD may lease property to accomplish the Service Plan; however, no lease shall survive beyond the completion date of the present Service Plan. Procurement procedures will be followed in obtaining a lease.

Section 11. Power of Attorney

A. Only the Board in open, properly called meetings may enter into contracts, obligate the District, or authorize the expenditure of funds. The Board in such sessions may direct District Officials, the President, and Personnel to take specific actions within parameters as set by the Board.

B. DMD will retain legal counsel and it is the responsibility of the President to seek legal assistance on behalf of the Board or DMD in general, and the ED, with respect to operational and procurement matters, as needed.

Section 12. Insurance

A. DMD will carry at all times commercial general liability, office contents, valuable papers and records, umbrella liability, directors and officers liability, and fidelity and public officials bond.

B. DMD will require indemnification and/or mandatory liability insurance coverage by its contractors and be named as a co-insured.

Section 13. Public Relations

A. The Board may from time to time designate names and logos for official public identification of services provided through funds of the District.

B. DMD will communicate progress on the Service Plan and seek input from the community, especially property owners within the District.

C. The DMD President and Vice President will be principal spokespeople for DMD and the District. Positions on issues will not be stated unless there is concurrence on a position by the Board or absent Board discussion, the Executive Committee. On occasion or specific projects an official spokesperson other than the President or Vice President can be designated by the Executive Committee

D. The Marketing Committee Chair shall be in charge of the public relations program for the District.

E. The ED shall be permitted to speak publicly on behalf of the DMD on issues that have been stated by the Board or on operational issues that fall within the ED's area of responsibility.

Section 14. Investment Policy

I. Introduction

The intent of the Investment Policy of the El Paso Downtown Management District is to define the parameters within which funds are to be managed. In methods, procedures and practices, the policy formalizes the framework for the District's investment activities that must be exercised to ensure effective and judicious fiscal and investment management of the District's funds. The guidelines are intended to be broad enough to allow the investment officer to function properly within the parameters of responsibility and authority, yet specific enough to adequately safeguard the investment assets.

II. Purpose

This policy with respect to District investments has been adopted to establish the principles and criteria by which the funds of the District should be invested and secured and to comply with various provisions of Texas law relating to the investment and security of funds of municipal management districts (the "Investment Laws") as recommended by the Finance Committee and are in compliance with the Public Finance Investment Act. The Investment Laws generally provide the minimum criteria for the authorized investment and security of the District's funds and require the District to adopt rules to ensure the investment of District funds in accordance with such laws.

III. Scope

This Investment Policy applies to the investment activities of the El Paso Downtown Management District. All financial assets of all funds, including the General Fund and any other accounts of the District not specifically excluded in these policy guidelines are included. These funds, as well as funds that may be created from time-to-time, shall be administered in accordance with the provisions of this Policy. All funds will be pooled for investment purposes.

IV. Investment Objectives & Strategies

It is the policy of the District that, giving due regard to the safety and risk of investments, all available funds shall be invested in conformance with State and Federal Regulations, adopted Investment Policy and adopted Investment Strategies.

In accordance with the Public Funds Investment Act, the following prioritized objectives (in order of importance) in accordance with the Tex. Gov't. Code Sec. 2256.005(d) apply for each of the District's investment strategies.

A. Suitability – Understanding the suitability of the investment to the financial requirements of the District is important. Any investment eligible in the Investment Policy is suitable for all District funds.

B. Safety – Preservation and safety of principal are the primary objectives of the Investment Policy. All investments will be in high quality securities with no perceived default risk.

C. Liquidity – The District's investment portfolio will remain sufficiently liquid to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets. Short-term investment pools and money market mutual funds provide daily liquidity and may be utilized as a competitive yield alternative to fixed income investments.

D. Marketability – Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market "spreads" between the bid and offer prices of a particular security type of less than a quarter of a percentage point shall define an efficient secondary market.

E. Diversification – Investment maturities shall be staggered throughout the budget cycle to provide cash flow based on the anticipated needs of the District. Diversifying the appropriate maturity structure will reduce market cycle risk.

F. Yield – Attaining a competitive market yield, commensurate with the District's investment risk constraints and the cash flow characteristics of the portfolio, is the desired objective. The goal of the District's investment portfolio is to regularly meet or exceed the average rate of return on U.S. Treasury Bills at a maturity level comparable to the portfolio's weighted average maturity in days. The yield of an equally weighted, rolling six-month Treasury Bill portfolio shall be the minimum yield objective or "benchmark". Six-month U.S. Treasury Bill information is derived from the Federal Reserve Statistical Release H.15 for constant maturities. A second objective will be to obtain a yield equal to or in excess of a local government investment pool or money market mutual fund.

The first measure of success in this area will be the attainment of enough income to offset inflationary increases. Although steps will be taken to obtain this goal, the District's staff will follow the "Prudent Person" statement relating to the standard of care that must be exercised when investing public funds as expressed in the Tex. Gov't. Code Sec. 2256.006(a-b). The Investment Officer shall avoid any transactions that might impair public confidence in the DMD's ability to govern effectively. The governing body recognizes that in diversifying the portfolio, occasionally measured unrealized losses due to market volatility are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented. The prudence of the investment decision shall be measured in accordance with the tests set forth in the Tex. Gov't. Code Sec. 2256.006(b).

V. Investment Strategy for Specific Fund Groups

In order to better diversify, maximize interest earning and otherwise meet stated objectives, fund groups may be combined into one or more internal investment pools. Although fund monies may be combined into a single asset portfolio, proportional fund ownership will be accounted for separately. The District maintains separate portfolios for some individual funds or groups of funds that are managed in accordance with the terms of this Policy and by the corresponding investment strategies listed below.

A. Investment Pool Strategy – The District's Investment Pool is an aggregation of the majority of District Funds which includes assessment income, service and fee revenues, as well as some, but not necessarily all, grants, gifts and endowments. This portfolio is maintained to meet anticipated daily cash needs for the District's operations. In order to ensure the ability of the District to meet obligations and to minimize potential liquidation losses, the dollar-weighted average stated maturity of the Investment Pool shall not exceed 1.5 years or 550 days. The objectives of this portfolio are to:

1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.

2. Ensure that anticipated cash flows are matched with adequate investment liquidity.

3. Limit market and credit risk through diversification.

4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy by actively managing the portfolio to meet or exceed the six month moving average yield on a six month U.S. Treasury Bill as derived from the Federal Reserve Statistical Release H.15 for constant maturities.

VI. Investment Officer

The District's elected Treasurer will serve as its Investment Officer and be responsible for the investment of District funds in accordance with this policy.

A. Scope: The Investment Officer will determine general strategies, investment guidelines and monitor results on a quarterly basis. Included in his/her deliberations will be such topics as economic outlook, portfolio diversification, maturity structure, potential risk to the District's funds, authorized broker/dealers (if applicable), and the target rate of return on the investment portfolio.

VII. Responsibility and Standard of Care

A. Delegation & Training – The management responsibility for the investment program is delegated to the Treasurer/Investment Officer. The primary individual who shall be involved in the investment activities will be his/her designee who has received the appropriate training required by state statute. The Treasurer/Investment Officer and designees will use this Policy as the primary guideline for the District's investment program, procedures, and internal control issues. Accordingly, the Investment Officer and persons authorized to execute investment transactions shall attend at least one training session relating to their responsibilities under the Public Funds Investment Act within 12 months after assuming duties and receive no less than 10 hours of instruction relating to investment functions every two years. The training must include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act. The investment training session shall be provided by an independent source approved by the Finance Committee. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a business organization with whom the District may engage in an investment transaction. Thus, these independent sources will be training sessions sponsored by the Government Treasurers Organization of Texas (GTOT), Center for Public Management at the University of North Texas (UNT), Government Finance Officers Association of Texas (GFOAT), Texas Municipal League (TML), North Central Texas Council of Governments (NCTCOG), Association of Public Treasurers United States & Canada (APT US & C), and Government Finance Officers' Association (GFOA). No persons may engage in investment transactions except as provided under the terms of this Policy. The Board shall require an annual compliance review by an external auditor that will consist of an audit of management controls on investments, adherence to the District's Investment Policy and a review of the

quarterly investment reports. The reviews will provide internal control by assuring compliance with policies and procedures. The Treasurer/Investment Officer, DMD Board, DMD Officers and DMD employees shall be personally indemnified in the event of investment loss provided that Investment Policy has been followed.

B. Conflicts of Interest – All participants in the investment process shall seek to act responsibly as custodians of public assets. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

C. Disclosures – Anyone involved in investing District funds shall disclose by written statement filed with the Board and the Texas Ethics Commission any personal business relationship with an entity offering to engage in investment transactions with the District or is related within the second degree by affinity or consanguinity as determined under the Tex. Gov't. Code Ch. 573, to an individual seeking to transact investment business with the District. An Investment Officer or other employee has a personal business relationship with a business organization if any one of the following three conditions are met:

    1. The Investment Officer or employee owns 10% or more of the voting stock or shares of the business organization or owns $5,000 or more of the fair market value of the business organization.

    2. Funds received by the Investment Officer or employee from the business organization exceed 10% of the investment officers gross income for the prior year.

    3. The Investment Officer or employee has acquired from the business organization during the prior year investments with a book value of $2,500 or more for their personal account.

D. Prudence – The standard of prudence to be used by the investment officials shall be the "Prudent Person Rule", as set forth in Tex. Gov't. Code Sec. 2256.006 and will be applied in the context of managing an overall portfolio: "Investments shall be made with judgement and care under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

Investment official acting in accordance with the Investment Policy and exercising due diligence shall be relieved of personal responsibilities for an individual security's credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments. In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the official had responsibility rather than consideration as to the prudence of a single investment and, whether, the investment decision was consistent with the District's Investment Policy.

E. Reporting

Quarterly - Not less than quarterly and within reasonable time after the end of the period reported, the Investment Officer with the assistance of any employee, representative or consultant of the District, if appropriate and desirable, shall prepare and submit to the Board a written report of the investment transactions for all funds of the District for the preceding reporting period. The report must (1) describe in detail the investment position of the District on the date of the report, (2) be prepared jointly by all Investment Officers, (3) be signed by each Investment Officer, (4) contain a summary statement, prepared in compliance with generally accepted accounting principles, of each pooled fund group including a) beginning market value for the reporting period; b) additions and changes to the market value during the period; c) ending market value for the period; and d) fully accrued interest for the reporting period, (5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by type of asset and fund type invested, (6) state the maturity date of each separately invested asset that has a maturity date, (7) state the account or District fund for which each individual investment was acquired, and (8) state the compliance of the investment portfolio as it relates to the investment strategy expressed in the Investment Policy.

Annually – The Finance Committee and Board shall review and approve the Investment Policy and investment strategies at least annually and be documented by rule, order, ordinance or resolution which shall include any changes made.

Compliance Audit – The District's external independent auditor will conduct an annual review of the quarterly reports in conjunction with the annual financial audit. The results of the audit will be reported to the Board. The audit will also review compliance with management controls on investments and adherence to this Policy.

F. The guidelines of retaining records for seven years as recommended in the *Texas State Library Municipal Records Manual* should be followed. The Executive Director shall oversee the filing and/or storing of investment records.

G. Market prices for all public fund investments will be obtained and monitored through an online data service or a similar qualified agency.

VIII. Suitable and Authorized Investment Securities

A. Active Portfolio Management – The District intends to pursue an active versus a passive investment management philosophy. That is, securities may be sold before they mature if market conditions present an opportunity for the District to benefit from the trade. In addition, the Investment Officer may at times restrict or prohibit the purchase of specific types of investments or issuers due to current market conditions.

The District shall take all prudent measures consistent with this Investment Policy to liquidate an investment that no longer meets the required minimum rating standards, as per Tex. Gov't. Code Sec. 2256.021. However, if it is determined by the Finance Committee that the District would benefit from holding the securities to maturity to recapture its initial investment then the Investment Officer may act accordingly. The District is not required to liquidate investments that were authorized investments at the time of purchase. (Tex. Gov't. Code Sec. 2256.017)

B. Authorized Investments – District funds governed by this Policy may be invested in the instruments described below, all of which are authorized by the Public Funds Investment Act.

1. Direct obligations of the United States of America, its agencies and instrumentalities (maturing in less than five (5) years).

2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States of America (maturing in less than five (5) years).

3. Direct obligations of the State of Texas or its agencies thereof, Counties, Cities and other political subdivisions rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than two (2) years).

4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas, rated as investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than two (2) years).

5. Fully insured or collateralized certificates of deposit/share certificates issued by state and national banks or savings banks or a state or federal credit union (having its main or branch office in Texas) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor; and secured by obligations in accordance with Section XII herein (maturing in less than two (2) years).

   In addition to the District's authority to invest funds in certificates of deposit and share certificates stated above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under Tex. Gov't. Code Sec. 2256.010(b): (1) the funds are invested by the District through a depository institution that has its main office or a branch office in this state and that is selected by the District; (2) the depository institution selected by the District under Subdivision (1) arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located for the account of the District; (3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; (4) the depository institution selected by the District under Subdivision (1) acts as custodian for the District with respect to the certificates of deposit issued for the account of the District; and (5) at the same time that the funds are deposited and the certificates of deposit are issued for the account of the District, the depository institution selected by the District under Subdivision (1) receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the District through the depository institution selected under Subdivision (1).

6. Commercial paper that has a stated maturity of 270 days or less from the date of the issuance and is rated A-1 or P-1 or an equivalent rating by at least two nationally recognized rating agencies.

7. Public (Local) Fund Investment Pools with a dollar weighted average maturity of 60 days or less. The pool must be approve (by resolution) by the Board to provide services to the District. The pool must be

continuously rated no lower than Aaa or AAAm or at an equivalent rating by at least one nationally recognized rating service. A public funds investment pool created to function as a money market mutual fund must mark to market daily and stabilize at a $1 net asset value.

To be eligible to receive funds from and invest funds on behalf of the District, an investment pool must furnish to the Investment Officer or other authorized representative an offering circular or other similar disclosure instrument that contains information required by the Tex. Gov't. Code Sec. 2256.016. Investments will be made in a local government investment pool only after a thorough investigation of the pool and approval by the Finance Committee which shall at least annually review, revise and adopt the local government investment pool(s).

8. A Securities and Exchange Commission (SEC) registered, no load money market mutual fund which has a dollar weighted average stated maturity of 60 days or less and whose investment objectives includes the maintenance of a stable net asset value of $1 for each share. Furthermore, it must be rated not less than Aaa, AAAm or an equivalent rating by at least one nationally recognized rating service and the District must be provided with a prospectus and other information required by the SEC Act of 1934 or the Investment Company Act of 1940. Investments will be made in a money market mutual fund only after a thorough investigation of the fund and approval by the Finance Committee which shall, at least annually, review, revise and adopt the money market mutual fund(s).

C. Prohibited Investments – The District's authorized investment options are more restrictive than those allowed by state law. Furthermore, this Policy specifically prohibits investment in the securities listed below:

1. Obligations, whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.

2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.

3. All collateralized mortgage obligations.

4. Reverse repurchase agreements.

D. Diversification – It is the policy of the District to diversify its investment portfolios. The diversification will protect interest income from the volatility of interest rates and the avoidance of undue concentration of assets in a specific maturity sector; therefore,

portfolio maturities shall be staggered. In establishing specific diversification strategies, the following general policies and constraints shall apply:

1. Risk of market price volatility shall be controlled through maturity diversification and by controlling unacceptable maturity extensions and a mismatch of liabilities and assets. The maturity extension will be controlled by limiting the weighted average maturity of the internal investment pool portfolio to 550 days. All long-term maturities will be intended to cover long-term liabilities. In addition, at least five (5%) percent of the funds in the investment pool portfolio will be liquid at all times. Investment pool liquidity is defined as shares in a local government investment pool and money market mutual fund, as well as bank balances.

2. The Finance Committee shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in U.S. Treasury Securities, federal agencies/instrumentalities, repurchase agreements, and insured/collateralized certificates of deposit and other securities or obligations. The Finance Committee shall conduct an annual review of these guidelines, and shall evaluate the probability of market and default risk in various investment sectors as part of its considerations.

3. Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations:

Investment Type	% of Portfolio
State of Texas Obligations, Agencies & Local Gov't.	100%
Local Government Investment Pools	100%
Certificates of Deposit (fully insured or collateralized)	90%
U.S. Money Market Mutual Fund	100%

By Institution:

Institution Name	% of Portfolio
WestStar Bank	100%
Capital Bank	100%
United Bank	100%
Bank of Texas	100%
Bank of America	100%
Chase Bank	100%
Wells Fargo	100%
Inter National Bank	100%

GECU	100%

4. Purchases of securities with stated maturities greater than the maximum authorized under this section require prior Board approval.

IX. Sale of Securities

The District's policy is to hold all securities to maturity. However, securities may be sold to minimize potential loss of principal on a security whose credit quality has declined, to swap into another security which would improve the quality, yield or target duration of the portfolio or to meet unanticipated liquidity needs of the portfolio. A horizon analysis is required for each swap proving benefit to the District before the trade decision is made, and will be held in file for record keeping.

X. Competitive Bidding

It is the policy of the District to require competitive bidding for all individual security purchases and sales, as well as for certificates of deposit. Exceptions include:

A. Transactions with money market mutual funds and local government investment pools which are deemed to be made at prevailing market rates.

B. Treasury and agency securities purchased as new issues through an approved broker/dealer, financial institution or investment advisor.

C. Automatic overnight "sweep" transactions with the District's depository bank.

At least three bids or offers must be solicited for all other transactions involving individual securities. The Investment Officer is also required to solicit at least three bids or offers when transacting trades on the District's behalf. In situations where the exact security is not offered by other broker/dealers, offers on the closest comparable investment may be used to establish a fair market price for the security. In the case of a certificate of deposit purchase, at least two other offers should be solicited to provide a comparison. When few, if any, banks wish to participate then staff may use another authorized investment of similar maturity for evaluation purposes. The quotes may be accepted orally, in writing, electronically, or any combination of these methods. The Finance Committee may approve exceptions on a case by case basis or on a general basis in the form of guidelines. These guidelines shall take into consideration the investment type, maturity date, amount and potential disruptiveness to the District's investment strategy.

XI. Selection of Banks, Broker/Dealers and Investment Advisors

A. Depository – the Board shall, by resolution, "select and designate one or more banking institutions as the depository for the monies and funds of the District" in accordance with the requirement of Tex. Loc. Gov't. Code Ch. 105. At least every five years a depository shall be selected through the District's banking services procurement process, which shall include a formal request for proposal (RFP). The selection of a depository will be determined by a competitive process and evaluated on the following criteria:

1. Qualified as a depository for public funds in accordance with state and local laws.
2. Provided requested information or financial statement for the periods specified.
3. Complied with all requirements in the banking RFP.
4. Completed responses to all required items on the proposal form.
5. Offered lowest net banking service cost, consistent with the ability to provide an appropriate level of service.
6. Meet credit worthiness and financial standards.

B. Investment Advisor – The District may retain the services of an investment advisory firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to assist in the review of cash flow requirements, the formulation of investment strategies, and the execution of security purchases, sales and deliveries. The investment advisory contract with the District may not be for a term longer than two years and its renewal or extension must be approved by the Board by resolution.

C. Compliance – A qualified representative from any firm offering to engage in investment transactions with the District is required to sign a written instrument upon receiving a copy of the District's Investment Policy. Investments shall only be made with those business organizations (including money market mutual funds and local government investment pools) which have provided the District with this written instrument executive by a qualified representative of the firm, acknowledging that the business organization has:

1. Received and reviewed the District's Investment Policy.

2. Implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the District and the organization that are not authorized by the City's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the District's entire portfolio or requires an interpretation of subjective investment standards.

3. If the District has contracted with an investment advisor, the advisor shall be responsible for performing financial due diligence on the District's behalf. On an annual basis, the advisor will provide the District with a list of its authorized broker/dealers as well as the written instrument above.

XII. Collateralization, Safekeeping and Custody

A. Collateralization – The District requires that all uninsured collected balances plus accrued interest, if any, in depository accounts be secured in accordance with the requirements of state law. Financial institutions serving as District depositories will be required to sign a depository agreement with the District which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution and conditions for agreement termination.

The District requires that all securities purchased under the terms of a repurchase agreement be assigned to the District in accordance with state law. Dealers and financial institutions wishing to transact repurchase agreements with the District will be required to sign a Master Repurchase Agreement which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

The District requires that all uninsured certificates of deposit plus accrued interest held with a depository be secured in accordance with the requirements of state law. Financial institutions will be required to sign a written depository and security agreement which stipulates eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

Collateral will always be held by an independent third party with which the District has a current custodial agreement and shall be reviewed at least monthly to ensure that the market value of the pledged securities is adequate. All deposits and investments of District funds, other than direct security purchases, money market mutual funds and local government investment pools shall be secured by pledged collateral set at no less than 102% of the market value of the principal

and accrued interest on the deposits or investments less an amount insured by FDIC. Eligible collateral to secure the District's deposits include:

1. Direct obligation of the United States government.

2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States government.

3. Direct obligations of agencies or instrumentalities of the United States government, including letters of credit.

The District will reject adjustable rate mortgages (ARMs), collateralized mortgage obligations (CMOs), step-ups, variable rate instruments (except U.S. Treasury inflation protected securities), or securities that are not found on common pricing systems.

B. Safekeeping and Custody – Safekeeping and custody of the District's investment securities shall be in accordance with state law. All security transactions, except local government investment pool and money market mutual fund transactions, shall be conducted on a delivery versus payment (DVP) basis. Investment securities will be held by a third party custodian designated by the District, and be required to issue safekeeping receipts clearly detailing that the securities are owned by the District.

Safekeeping and custody of collateral shall be in accordance with state law. Collateral will be held by a third party custodian designated by the District, and pledged to the District as evidenced by safekeeping receipts form the institution holding the securities.

C. Subject to Audit – All collateral shall be subject to inspection and audit by the Investment Officer, or designee, as well as the District's independent auditors.

XIII. Management and Internal Controls

Controls shall be designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees or Investment Officers of the District.

Controls and managerial emphasis deemed most important that shall be employed include the following:

Imperative Controls

- Custodian safekeeping receipts records management
- Avoidance of bearer-form securities
- Documentation of investment bidding events
- Written confirmation of telephone transactions
- Reconcilements and comparisons of security receipts with the investment records
- Compliance with Investment Policy
- Verification of all interest income and security purchase and sell computations

Controls Where Practical

- Control of Collusion
- Separation of duties
- Separation of transaction authority between accounting and record-keeping
- Clear delegation of authority
- Accurate and timely reports
- Validation of investment maturity decisions with supporting cash flow data
- Adequate training and development of Investment Officials
- Review of financial conditions of all brokers/dealers, and depository institutions
- Staying informed about market conditions, changes and trends that require adjustments to investment strategies.

XIV. Investment Policy Adoption

The Investment Policy shall be formally approved and adopted by resolution of the Board and reviewed annually in accordance with the provisions of the Public Funds Investment Act of Texas Government Code Chapter 2256.

Section 15. Appendices to Investment Policy

"A" Section 36.08, Texas Penal Code

"B" Section 36.10, Texas Penal Code

"C" Section 36.02, Texas Penal Code

"D" Chapter 573, Texas Government Code

"E" Section 49.156 and 49.157, Texas Water Code

"F". Chapter 2256, Texas Government Code

"G" Interlocal Cooperation Act, Chapter 791, Texas Government Code

"H" Chapter 2257, Texas Government Code

"I" Chapter 404.101 et seq., Texas Government Code

Note: Copies of appendices may be obtained from the Records Management Officer.

Section 16. Adoption and Revision

A. The Board officially finds, determines and declares that these Administrative Policies and Procedures were reviewed, carefully considered, and adopted at a regular meeting of the Board October 24, 2019, and that a sufficient written notice of the date, hour, place, and subject of this meeting was posted at a place readily accessible and convenient to the pubic within the District and on a bulletin board located at a place convenient to the public in the El Paso county Courthouse for the time required by law preceding this meeting, as required in Chapter 55, Texas Government Code, and Section 49.063, Texas Water Code, and that this meeting had been open to the pubic as required by law at all times during which these Code of Ethics and Policies were discussed, considered, and acted upon. The Board further ratifies, approves, and confirms such written notice and the contents and posting thereof.

B. District Administrative Rules, Policies and Procedures shall be reviewed at least annually. Any amendments to the Administrative Policies and Procedures must be approved by DMD's Board in open meeting.

Passed and approved by the Board the 24th day of October, 2019.

President

Secretary

LOCAL GOVERNMENT CODE

TITLE 12. PLANNING AND DEVELOPMENT

SUBTITLE A. MUNICIPAL PLANNING AND DEVELOPMENT

CHAPTER 375. MUNICIPAL MANAGEMENT DISTRICTS IN GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. LEGISLATIVE FINDINGS; PURPOSES. (a) The creation of a municipal management district is declared to be essential to the accomplishment of the purposes of Article III, Section 52, Article XVI, Section 59, and Article III, Section 52-a, of the Texas Constitution and to the accomplishment of the other public purposes stated in this chapter.

(b) The creation of each district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of municipalities and metropolitan areas of this state.

(c) The creation of districts and this chapter may not be interpreted to relieve any municipality from providing services to an area included in the district or to release the municipality from the obligation it has to provide municipal services to that area. A district is created to supplement and not supplant the municipal services of the municipality.

(d) All of the land and other property to be included within the boundaries of a district will be benefited by the works and projects that are to be accomplished and the services to be provided by the district under powers conferred by Article III, Section 52, Article XVI, Section 59, and Article III, Section 52-a, of the Texas Constitution and other powers granted under this chapter.

(e) A district is created to serve a public use and benefit.

(f) The creation of a district is essential to further the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment, and the development or expansion of transportation and commerce and is in the public interest.

(g) A district will promote the health, safety, and general welfare of residents, employers, employees, and consumers in the district and the general public.

(h) A district is designed to provide needed funding for metropolitan areas to preserve, maintain, and enhance the economic health and vitality of the areas as community and business centers.

(i) The present and prospective traffic congestion in municipalities in this state, the need for traffic control and the safety of pedestrians, and the limited availability of funds require the promotion and development of public transportation and pedestrian facilities and systems by new and alternative means, and a district will serve the public purpose of securing expanded and improved transportation and pedestrian facilities and systems. The public transportation and pedestrian facilities and systems promoted and developed by a district will be attractive, safe, and convenient and will benefit not only the land and property in the district, but also the employees, employers, and consumers of the district and the general public.

(j) A district will further promote the health, safety, welfare, morals, convenience, and enjoyment of the public by landscaping and developing certain areas within the district that are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty.

(k) A district will not act as the agent or instrumentality of any private interests even though many private interests will be benefited by the district, as will the general public.

(l) The purpose of this chapter is to promote and benefit commercial development and commercial areas throughout the state. Each improvement project or service authorized by this chapter is found and declared to carry out a public purpose.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.002. CONSTRUCTION OF CHAPTER. (a) This chapter shall be liberally construed in conformity with the findings and purposes in Section 375.001.

(b) If any provision of general law is in conflict or inconsistent with this chapter, this chapter prevails. Any general law not in conflict or inconsistent with this chapter is adopted and incorporated by reference.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.003. DEFINITIONS. In this chapter:

(1) "Board" means a board of directors of a district.

(2) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture between minority and women's group members formed for the purpose of making a profit and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management, interest in capital, and interest earnings, other than a joint venture in which majority group members own or control debt securities, leasehold interest, management contracts, or other interests;

(E) a supplier contract between persons described in Paragraph (A) and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies; or

(F) a person certified as a disadvantaged business by:

(i) this state;

(ii) a political subdivision of this state; or

(iii) a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391.

(5) "District" means a management district created under this chapter.

(6) "Mass transit" means transportation of passengers and their hand-carried packages or baggage by motorbus, trolley, coach, street railway, rail, suspended overhead rail, elevated railway, subway, people mover, automobile, or any other surface, overhead, or underground transportation or any combination of the preceding and includes stations or

terminals and public parking facilities and facilities incidental to or related to any of the preceding, including commercial or shopping areas.

(7) "System" means all real and personal property owned or held by a district for mass transit purposes, including land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment, and facilities including vehicle parking areas and facilities, and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars and buses, control houses, signals and land, facilities, and equipment for the protection and environmental enhancement of those facilities.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.256, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 1, eff. September 1, 2011.

Sec. 375.004. GOVERNMENTAL AGENCY; TORT CLAIMS. (a) A district is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) A district is a unit of government for purposes of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), and operations of a district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 375.022. PETITION. (a) Before a district may be created, the commission must receive a petition requesting creation of the district.

(b) The petition must be signed by the owners of a majority of the assessed value of the real property in the proposed district, according to the most recent certified county property tax rolls.

(c) The petition must:

(1) describe the boundaries of the proposed district:

(A) by metes and bounds;

(B) by verifiable landmarks, including a road, creek, or railroad line; or

(C) if there is a recorded map or plat and survey of the area, by lot and block number;

(2) state the specific purposes for which the district will be created;

(3) state the general nature of the work, projects, or services proposed to be provided, the necessity for those services, and the costs as estimated by the persons filing the petition;

(4) include a name of the district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District";

(5) include a proposed list of initial directors that includes the directors' experience and initial term of service; and

(6) include a resolution of the governing body of the municipality in support of the creation of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 761 (S.B. 1987), Sec. 3, eff. June 12, 2017.

Sec. 375.023. COMMISSION HEARING; CONTENTS OF NOTICE. The commission or a person authorized by the commission shall set a date, time, and place for a hearing to consider each petition received. The commission or authorized person shall issue a notice of the date, time, and place of hearing. The notice must state that each person has a right to appear and present evidence and testify for or against the allegations in the petition, the form of the petition, the necessity and feasibility of the district's project, and the benefits to accrue.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.024. PUBLICATION OF NOTICE. (a) The commission or authorized person shall publish notice of the hearing in a newspaper of general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks. The first publication must occur not later than the 31st day before the date on which the hearing will be held.

(b) The commission or authorized person shall also mail a copy of the notice to each county in which the proposed district is located if the

county has formally requested notice of the creation of each district in the county.

(c) A municipality may request that it receive during a year notice of hearings on the creation of a district by filing a request with the commission during January of the year. The municipality's request must state the names and mailing addresses of not more than two persons to whom the commission shall send the notice on behalf of the municipality.

(d) A certificate of a representative of the commission that notice was mailed to each county in which the proposed district is located that had formally requested notice is conclusive evidence that notice was properly mailed to each county.

(e) Not later than the 30th day before the date of the hearing, the petitioner shall send the notice of the hearing by certified mail, return receipt requested, to each person who owns real property in the proposed district, according to the most recent certified county property tax rolls, other than a property owner who signed the petition for creation. The tax assessor and collector shall certify from the tax rolls ownership of property on the date the petition is filed with the commission.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.025. HEARING. (a) At a hearing set under Section 375.023, the commission shall examine the petition to determine its sufficiency. Any interested person may appear before the commission in person or by attorney and offer testimony on the sufficiency of the petition and whether the district is feasible and necessary and would be a benefit to all or any part of the land proposed to be included in the district.

(b) The commission has jurisdiction to determine each issue relating to the sufficiency of the petition and to the creation of the district and may issue necessary incidental orders in relation to the issues before the commission. The commission may adjourn the hearing from day to day.

(c) If after the hearing the commission finds that the petition conforms to the requirements of Section 375.022(c) and that the district is feasible and necessary and would benefit the public, the commission by order shall make that finding and grant the petition. In determining if the project is feasible and necessary and would benefit the public, the commission shall consider:

(1) the availability of comparable services from other systems, including special districts, municipalities, and regional authorities; and

(2) the reasonableness of the proposed public purpose projects and services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.026. ORDER; INITIAL DIRECTORS. If the commission grants the petition, the commission in the order creating the district shall state the specific purposes for which the district is created and shall appoint the initial directors.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER C. BOUNDARIES

Sec. 375.041. COMMISSION ORDER. The boundaries of a district are as prescribed by the commission order creating the district. The commission may issue a subsequent order changing the boundaries of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.042. MISTAKE IN BOUNDARY DESCRIPTION. If in the petition or order a mistake is made in the field notes or in copying the field notes of the boundaries of a district, the mistake does not affect:

(1) the organization, existence, and validity of the district;

(2) the right of the district to issue any type of bonds or refunding bonds for the purposes for which the district is created or to pay the principal of and interest on the bonds;

(3) the right of the district to levy and collect assessments or taxes; or

(4) the legality or operation of the district or its governing body.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.043. ANNEXATION. A district may annex land as provided by Section 49.301 and Chapter 54, Water Code, subject to the approval of the governing body of the municipality.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 3, eff. September 1, 2011.

Sec. 375.044. EXCLUDING TERRITORY. (a) At any time during which a district does not have outstanding bonds, the board on its own motion may call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 54, Water Code, if the exclusions are practicable, just, or desirable.

(b) The board shall call a hearing on the exclusion of land or other property from the district if a signed petition evidencing the consent of the owners of a majority of the acreage in the district, according to the most recent certified tax roll of the county, is filed with the secretary of the board requesting the hearing before the issuance of bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 4, eff. September 1, 2011.

SUBCHAPTER D. ADMINISTRATIVE PROVISIONS; BOARD OF DIRECTORS

Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is governed by a board of at least five but not more than 30 directors who serve staggered four-year terms.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 5, eff. September 1, 2011.

Sec. 375.062. TERMS OF INITIAL DIRECTORS. The initial directors shall be divided into two groups that are as equal in number as possible; one group serves four-year terms and one group serves two-year terms. The grouping of initial directors and terms for the directors in each group shall be determined by the commission.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.063. QUALIFICATIONS OF DIRECTOR. To be qualified to serve as a director, a person must be at least 18 years old and:

(1) a resident of the district;

(2) an owner of property in the district;

(3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district;

(4) an owner of a beneficial interest in a trust that owns property in the district; or

(5) an agent, employee, or tenant of a person covered by Subdivision (2), (3), or (4).

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.064. RECOMMENDATIONS FOR SUCCEEDING BOARD. (a) The initial and each succeeding board of directors shall recommend to the governing body of the municipality persons to serve on the succeeding board.

(b) After reviewing the recommendations, the governing body shall approve or disapprove the directors recommended by the board.

(c) If the governing body is not satisfied with the recommendations submitted by the board, the board, on the request of the governing body, shall submit to the governing body additional recommendations.

(d) Board members may serve successive terms.

(e) If any provision of Subsections (a) through (d) is found to be invalid, the commission shall appoint the board from recommendations submitted by the preceding board.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 912, Sec. 20, eff. September 1, 2011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 20, eff. September 1, 2011.

Sec. 375.065. REMOVAL OF DIRECTOR. The governing body of the municipality after notice and hearing may remove a director for misconduct or failure to carry out the director's duties on petition by a majority of the remaining directors.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.066. BOARD VACANCY. A vacancy in the office of director shall be filled by the remaining members of the board for the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.067. DIRECTOR'S BOND AND OATH. (a) As soon as practicable after a director is appointed, the director shall execute a $10,000 bond payable to the district and conditioned on the faithful performance of the director's duties.

(b) Each director's bond must be approved by the board, and each director shall take the oath of office prescribed by the constitution for public officers.

(c) The bond and oath shall be filed with the district and retained in its records.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.068. OFFICERS. After directors are appointed and have qualified by executing a bond and taking the oath, they shall organize by electing a president, a vice-president, a secretary, and any other officers the board considers necessary.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.069. BOARD POSITION NOT CIVIL OFFICE OF EMOLUMENT. A position on the board may not be construed to be a civil office of emolument for any purpose, including those purposes described by Article XVI, Section 40, of the Texas Constitution.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.070. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. A director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.071. QUORUM. One-half of the serving directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district. The written consent of at least two-thirds of the directors is required to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 6, eff. September 1, 2011.

Sec. 375.072. PARTICIPATION IN VOTING. (a) A person who qualifies to serve on the board under Section 375.063 is qualified to serve as a director and participate in all votes pertaining to the business of the district regardless of any other statutory provision to the contrary.

(b) A director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board may participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit.

(c) An employee of a public entity may serve on the board of directors of the district, but the public employee may not participate in the discussion of or vote on any matter regarding assessments on or contracts with the public entity of which the director is an employee.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 375.091. GENERAL POWERS OF DISTRICT. A district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.225, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 7, eff. September 1, 2011.

Sec. 375.092. SPECIFIC POWERS. (a) A district has the powers necessary or convenient to carry out and effect the purposes and provisions of this chapter, including the powers granted in this section.

(b) A district has perpetual succession.

(c) A district may sue and be sued in courts of competent jurisdiction, may institute and prosecute suits without giving security for

costs, and may appeal from a judgment without giving supersedeas or cost bond.

(d) A district may incur liabilities, borrow money on terms and conditions the board determines, and issue notes, bonds, or other obligations.

(e) A district may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease, or dispose of real and personal property, and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this chapter.

(f) A district may acquire, construct, complete, develop, own, operate, and maintain permanent improvements and provide services inside and outside its boundaries.

(g) A district may enter into agreements with a person or entity, public or private, for the joint use of facilities, installations, and property.

(h) A district may establish and maintain reasonable and nondiscriminatory rates, fares, tolls, charges, rents, or other fees or compensation for the use of the improvements constructed, operated, or maintained by the district.

(i) A district may enter contracts, leases, and agreements with and accept grants and loans from the United States and its departments and agencies, the state and its agencies, counties, municipalities, and political subdivisions, public or private corporations, including a nonprofit corporation created under a resolution of the board, and other persons and may perform all acts necessary for the full exercise of the powers vested in it on terms and conditions and for the term the board may determine to be advisable.

(j) A district may acquire property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement.

(k) A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties that are not needed for or, in the case of leases, that are not inconsistent with the efficient operation and maintenance of the district's improvements. A district may sell, lease, or otherwise dispose of any surplus material or personal or real property not needed for its requirements or for the purpose of carrying out its powers under this chapter.

(l) A district may lease projects or any part of a project to or contract for the use or operation of the projects or any part of a project

by any operator.

(m) A district may conduct hearings and take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the purposes of this chapter.

(n) A district may procure and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

(o) A district may do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this chapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under Section 52, Article III, Texas Constitution, a district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

(b) The district may impose ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided by Section 52, Article III, and Section 52-a, Article III, Texas Constitution.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 8, eff. September 1, 2011.

Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 8, eff. September 1, 2011.

Sec. 375.093. USE AND ALTERATION OF PUBLIC WAYS. (a) With the consent of the municipality, the district is entitled to use the streets,

alleys, roads, highways, and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other property, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system or to have those things done at the district's sole expense.

(b) The district may not proceed with any action to change, alter, or damage the property or facilities of the state, its municipal corporations, agencies, or political subdivisions or of owners rendering public services, or that will disrupt those services being provided by others, or to otherwise inconvenience the owners of that property or those facilities without having first obtained the written consent of those owners. If the owners of the property or facilities desire to handle the relocation, raising, change in the grade of, or alteration in the construction of the property or facilities with their own personnel or have the work done by contractors of their own choosing, the district may enter agreements with the owners providing for the necessary relocations, changes, or alterations of the property or facilities by the owners or contractors and the reimbursement by the district to those owners of the costs incurred by the owners in making those relocations, changes, or alterations or having them accomplished by contractors.

(c) If a district, in exercising any of the powers conferred by this chapter, requires the relocation, adjustment, raising, lowering, rerouting, or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad track, bridge, or other facilities or property, any electric lines, conduits, or other facilities or property, any telephone or telegraph lines, conduits, or other facilities or property, any gas transmission or distribution pipes, pipelines, mains, or other facilities or property, any water, sanitary sewer or storm sewer pipes, pipelines, mains, or other facilities, or property, any cable television lines, cables, conduits, or other facilities or property, or any other pipelines and any facilities or properties relating to those pipelines, those relocations, adjustments, raising, lowering, rerouting, or changing of grade, or altering of construction must be accomplished at the sole cost and expense of the district, and damages that are suffered by the owners of the property or facilities shall be borne by the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.094. NO EMINENT DOMAIN POWER. A district may not exercise the power of eminent domain.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.095. MANAGEMENT BY BOARD OF DIRECTORS. The responsibility for the management, operation, and control of the property belonging to a district is vested in the board.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.096. SPECIFIC POWERS AND DUTIES OF BOARD. (a) The board may:

(1) employ all persons, firms, partnerships, or corporations considered necessary by the board for the conduct of the affairs of the district, including a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers, peace or traffic control officers, architects, and operating or management companies and prescribe the duties, tenure, and compensation of each;

(2) dismiss employees;

(3) adopt a seal for the district;

(4) invest funds of the district in any investments authorized by Subchapter A, Chapter 2256, Government Code and provide, by resolution, that an authorized representative manage the district's funds and invest and reinvest the funds of the district on terms the board considers advisable;

(5) establish a fiscal year for the district;

(6) establish a complete system of accounts for the district and each year shall have prepared an audit of the district's affairs, which shall be open to public inspection, by an independent certified public accountant or a firm of independent certified public accountants; and

(7) designate one or more banks to serve as the depository bank or banks.

(b) Funds of a district shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the district's bonds or notes. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they must be secured in the manner provided by law for the security of funds of counties. The board by resolution may authorize a

designated representative to supervise the substitution of securities pledged to secure the district's funds.

(c) The board may adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects.

(d) The name of the district may be established or changed by resolution of the board.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 375.097. HEARINGS EXAMINER; ADMINISTRATIVE PROCEDURE ACT. (a) The board may appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395. The hearings examiner may be an employee or contractor of the district, or a member of the district's board.

(b) The hearing shall be conducted in accordance with Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 9, eff. September 1, 2011.

Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 10, eff. September 1, 2011.

SUBCHAPTER F. ASSESSMENTS

Sec. 375.111. GENERAL POWERS RELATING TO ASSESSMENTS. In addition to the powers provided by Subchapter E, the board of a district may undertake improvement projects and services that confer a special benefit on all or a definable part of the district. The board may levy and collect special assessments on property in that area, based on the benefit conferred by the improvement project or services, to pay all or part of the cost of the project and services. If the board determines that there is a benefit to the district, the district may provide improvements and services to an area outside the boundaries of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.112. SPECIFIC POWERS RELATING TO ASSESSMENTS. (a) An improvement project or services provided by the district may include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of:

(1) landscaping; lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer, and power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; theatres, studios, exhibition halls, production facilities and ancillary facilities in support of the foregoing; and the cost of any demolition in connection with providing any of the improvement projects;

(2) other improvements similar to those described in Subdivision (1);

(3) the acquisition of real property or any interest in real property in connection with an improvement, project, or services authorized

by this chapter, Chapter 54, Water Code, or Chapter 365 or 441, Transportation Code;

(4) special supplemental services for advertising, economic development, promoting the area in the district, health and sanitation, public safety, maintenance, security, business recruitment, development, elimination or relief of traffic congestion, recreation, and cultural enhancement; and

(5) expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects, or services.

(b) An improvement project on two or more streets or two or more types of improvements may be included in one proceeding and financed as one improvement project.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.226, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 11, eff. September 1, 2011.

Sec. 375.113. PROPOSED ASSESSMENTS. Services or improvement projects may be financed under this chapter after a hearing notice given as required by this subchapter and a public hearing by the board on the advisability of the improvements and services and the proposed assessments.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.114. PETITION REQUIRED. The board may not finance services and improvement projects under this chapter unless a written petition has been filed with the board requesting those improvements or services signed by:

(1) the owners of 50 percent or more of the assessed value of the property in the district subject to assessment, according to the most recent certified county property tax rolls; or

(2) the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, and utility rights-of-way, other public areas, and any other property exempt from assessment under Section 375.162 or 375.163, according to the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 12, eff. September 1, 2011.

Sec. 375.115. NOTICE OF HEARING. (a) Notice of the hearing shall be given in a newspaper with general circulation in the county in which the district is located. The final publication must be made not later than the 30th day before the date of the hearing.

(b) The notice must include:

(1) the time and place of the hearing;

(2) the general nature of the proposed improvement project or services;

(3) the estimated cost of the improvement, including interest during construction and associated financing costs; and

(4) the proposed method of assessment.

(c) Written notice containing the information required by Subsection (b) shall be mailed by certified mail, return receipt requested, or by another method determined by the board to provide adequate proof that the notice was timely mailed, not later than the 30th day before the date of the hearing. The notice shall be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1265 (H.B. 871), Sec. 1, eff. September 1, 2009.

Sec. 375.116. CONCLUSION OF HEARING; FINDINGS. (a) A hearing on the services or improvement project, whether conducted by the board or a hearings examiner, may be adjourned from time to time.

(b) At the conclusion of the hearing, the board shall make findings by resolution or order relating to the advisability of the improvement project or services, the nature of the improvement project or services, the estimated cost, the area benefited, the method of assessment, and the method and time for payment of the assessment.

(c) If a hearings examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearings examiner shall file with the board a report stating the examiner's findings and conclusions.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.117. AREA TO BE ASSESSED. (a) The area of the district to be assessed according to the findings of the board may be the entire district or any part of the district and may be less than the area proposed in the notice of the hearing.

(b) Except as provided by Subsection (c), the area to be assessed may not include property that is not within the district boundaries at the time of the hearing unless there is an additional hearing, preceded by the required notice.

(c) The owner of improvements constructed or land annexed to the district after the district has imposed assessments may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for improvements constructed or land annexed to the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.118. OBJECTIONS; LEVY OF ASSESSMENT. (a) At a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearings examiner's report, the board shall hear and rule on all objections to each proposed assessment.

(b) The board may amend proposed assessments for any parcel.

(c) After all objections have been heard and action has been taken with regard to those objections, the board, by order or resolution, shall levy the assessments as special assessments on the property and shall specify the method of payment of the assessments and may provide that those assessments be paid in periodic installments, including interest.

(d) Periodic installments must be in amounts sufficient to meet annual costs for services and improvements as provided by Section 375.119 and continue for the number of years required to retire indebtedness or pay for the services to be rendered. The board may provide interest charges or penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection.

(e) If assessments are levied for more than one service or improvement project, the board may provide that assessments collected for one service or improvement project may be borrowed to be used for another service or improvement project.

(f) The board shall establish a procedure for the distribution or use of any assessments in excess of those necessary to finance the services or improvement project for which those assessments were collected.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.119. APPORTIONMENT OF COST. The portion of the cost of an improvement project or services to be assessed against the property in the district shall be apportioned by the board based on the special benefits accruing to the property because of the improvement project or services. The cost may be assessed:

(1) equally by front foot or by square foot of land area against all property in the district;

(2) against property according to the value of the property as determined by the board, with or without regard to structures or other improvements on the property; or

(3) on any other reasonable assessment plan that results in imposing fair and equitable shares of the cost on property similarly benefited.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.120. ASSESSMENT ROLL. If the total cost of an improvement project or services is determined, the board shall levy the assessments against each parcel of land against which an assessment may be levied in the district. With regard to an assessment for services, the board may levy an annual assessment that may be lower but not higher than the initial assessment. The board shall have an assessment roll prepared showing the assessments against each property and the board's basis for the assessment. The assessment roll shall be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.121. INTEREST ON ASSESSMENTS; LIEN. (a) Assessments bear interest at a rate specified by the board that may not exceed the interest rate permitted by Chapter 1204, Government Code.

(b) Interest on an assessment between the effective date of the order or resolution levying the assessment and the date the first installment and any related penalty is payable shall be added to the first installment. The interest or penalties on all unpaid installments shall be added to each subsequent installment until paid.

(c) An assessment or any reassessment and any interest and penalties on that assessment or reassessment is a lien against the property until it is paid.

(d) The owner of any property assessed may pay at any time the entire assessment against any lot or parcel with accrued interest to the date of the payment.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.331, eff. Sept. 1, 2001.

Sec. 375.122. SUPPLEMENTAL ASSESSMENTS. After notice and hearing in the manner required for original assessments, the board may make supplemental assessments to correct omissions or mistakes in the assessment:

(1) relating to the total cost of the improvement project or services; or

(2) covering delinquencies or costs of collection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.123. APPEAL. (a) After determination of an assessment, a property owner may appeal the assessment to the board. The property owner must file a notice of appeal with the board not later than the 30th day after the date that the assessment is adopted. The board shall set a date to hear the appeal.

(b) The property owner may appeal the board's decision on the assessment to a court of competent jurisdiction. The property owner must file notice of the appeal with the court of competent jurisdiction not later than the 30th day after the date of the board's final decision with respect to the assessment.

(c) Failure to file either of the notices in the time required by this section results in a loss of the right to appeal the assessment.

(d) If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board, the board may make a reassessment or new assessment of the parcel.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.124. APPEAL OF ORDER. A person against whom an assessment is made by board order may appeal the assessment to a district court in the

county in which the district is located in the manner provided for the appeal of contested cases under Chapter 2001, Government Code. Review by the district court is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER G. IMPACT FEES

Sec. 375.141. IMPOSITION OF IMPACT FEES. (a) The board may impose impact fees to pay for the cost of providing improvements that the district is authorized to provide under this chapter, including mass transit systems.

(b) The board may provide for impact fees to be paid in periodic installments and may include an interest charge from the date the impact fees are imposed to the date the impact fees are paid.

(c) The board may provide interest charges and penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.142. PROCEDURE FOR ADOPTING IMPACT FEES. Impact fees shall be adopted under the procedures provided by Chapter 395, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER H. EXEMPTIONS

Sec. 375.161. CERTAIN RESIDENTIAL PROPERTY EXEMPT. (a) Except as provided by Subsection (b), the board may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes.

(b) This section does not apply to a tax authorized or approved by the voters of the district or a required payment for a service provided by the district, including water and sewer services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 2, eff. September 1, 2013.

Sec. 375.162. GOVERNMENTAL ENTITIES; ASSESSMENTS. Payment of assessments by municipalities, counties, other political subdivisions, and organizations exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, shall be established by contract. Municipalities, counties, and other political subdivisions may contract with the district under terms and conditions those entities consider advisable to provide for the payment of assessments.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.163. RECREATIONAL, PARK, OR SCENIC USE PROPERTY. (a) Property that comprises three or more acres, separated only by streets or public rights-of-way, that was used primarily for recreational, park, or scenic use during the immediately preceding calendar year and on which money has been spent for landscaping at any time in an amount that is equal to the lesser of five years of proposed district assessments on the property or the proposed amount of the district's assessments on the property pursuant to a plan of assessment adopted by the board is exempt from assessment by the district, except with consent of the owner of the property.

(b) Property is exempt from assessment by the district under this section during the period that the property is used primarily for recreational, park, or scenic use in accordance with this section.

(c) The fact that property is exempt from assessment by the district may not be construed to be an express or implied dedication of the property to the public for recreational, park, scenic, or other public use or constitute evidence of an intent by the owner of the property to make or offer to make that type of dedication and does not affect the status of the property as private property.

(d) If the district levies ad valorem taxes, property that qualifies for an exemption from assessment under this section must be taxed by the district at its appraised value for recreational, park, or scenic use determined in accordance with Subchapter F, Chapter 23, Tax Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.164. RESIDENTIAL PROPERTY EXEMPTED BY BOARD. The board may exempt residential property from all or a part of the assessments levied on that property or determine that residential property will not be benefited by the proposed improvement project or services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.165. GOVERNMENTAL ENTITIES; IMPACT FEES. (a) A municipality, county, or other political subdivision is exempt from impact fees imposed by the district unless the municipality, county, or other political subdivision consents to payment of the fees by official act of its governing body.

(b) Payment of impact fees by a municipality, county, or other political subdivision must be established by contract.

(c) A municipality, county, or other political subdivision may contract with the district under terms and conditions the governmental entity considers advisable to provide for payment of impact fees.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER I. FUNDS

Sec. 375.181. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES. (a) The cost of any improvement project or services, including interest during construction and costs of issuance of bonds, may be paid from general or available funds, assessments, or the proceeds of bonds payable from taxes, revenues, assessments, impact fees, grants, gifts, contracts, leases, or any combination of those funds.

(b) During the progress of an improvement project or services, the board may issue temporary notes to pay the costs of the improvement project or services and issue bonds on completion.

(c) The costs of more than one improvement project or service may be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.182. PROHIBITED USE OF FUNDS. Funds may not be spent, an assessment imposed, or a tax levied under this chapter to finance the opening, reopening, or maintenance of a pass, canal, or waterway across a barrier island connecting the Gulf of Mexico with inland waters.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER J. BONDS

Sec. 375.201. GENERAL OBLIGATION AND REVENUE BONDS. For the payment of all or part of the costs of an improvement project or services, the board may issue bonds in one or more series payable from and secured by ad valorem taxes, assessments, impact fees, revenues, grants, gifts, contracts, leases, or any combination of those funds. Bonds may be liens on all or part of the revenue derived from improvements authorized under this chapter, including installment payments of special assessments or from any other source pledged to their payment.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.202. TERMS AND CONDITIONS OF BONDS. (a) Bonds may be issued to mature serially or otherwise not more than 40 years from their date of issue. Provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms or conditions that may be stated in the order or resolution authorizing the issuance of the bonds.

(b) The bonds are negotiable instruments within the meaning and for purposes of the Business & Commerce Code.

(c) The bonds may be issued registrable as to principal alone or as to both principal and interest, shall be executed, may be made redeemable before maturity, may be issued in the form, denominations, and manner and under the terms, conditions, and details, may be sold in the manner, at the price, and under the terms, and shall bear interest at the rates determined and provided in the order or resolution authorizing the issuance of the bonds.

(d) Bonds may bear interest and may be issued in accordance with Chapters 1201, 1204, and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code.

(e) If provided by the bond order or resolution, the proceeds from the sale of bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to pay administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, to pay costs associated with the issuance of the bonds, and to create any other funds. The proceeds of the

bonds may be placed on time deposit or invested, until needed, in securities in the manner provided by the bond order or resolution.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.332, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 13, eff. September 1, 2011.

Sec. 375.203. PLEDGES. (a) The board may pledge all or part of the income or assessments from improvement projects financed under this chapter or from any other source to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged income shall be set and collected in amounts that will be at least sufficient, with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and, to the extent required by the order or resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and to pay operation, maintenance, and other expenses in connection with the improvement projects authorized under this chapter.

(b) Bonds may be additionally secured by a mortgage or deed of trust on real property relating to the facilities authorized under this chapter owned or to be acquired by the district and by chattel mortgages, liens, or security interests on personal property appurtenant to that real property. The board may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance to evidence the indebtedness.

(c) The board may pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.204. REFUNDING BONDS. (a) Bonds issued under this chapter may be refunded or otherwise refinanced by the issuance of refunding bonds under terms or conditions determined by order or resolution of the board. Refunding bonds may be issued in amounts necessary to pay the principal of and interest and redemption premium, if any, on bonds to be refunded, at maturity or on any redemption date, and to provide for the payment of costs incurred in connection with the refunding.

(b) The refunding bonds shall be issued in the manner provided by this chapter for other bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.205. APPROVAL BY ATTORNEY GENERAL; REGISTRATION. (a) The district shall submit bonds and the appropriate proceedings authorizing their issuance to the attorney general for examination. This subsection applies only to bonds that are public securities, as that term is defined by Section 1202.001, Government Code.

(b) If the bonds recite that they are secured by a pledge of assessments, impact fees, revenues, or rentals from a contract or lease, the district also shall submit to the attorney general a copy of the assessment procedures, impact fee procedures, contract, or lease and the proceedings relating to it.

(c) If the attorney general finds that the bonds have been authorized and any assessment, contract, or lease has been made in accordance with law, the attorney general shall approve the bonds and the assessment, impact fee, contract, or lease, and the bonds shall be registered by the comptroller.

(d) After approval and registration, the bonds and any assessment, impact fee, contract, or lease relating to them are incontestable in any court or other forum for any reason and are valid and binding obligations for all purposes in accordance with their terms.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 14, eff. September 1, 2011.

Sec. 375.206. AUTHORIZED INVESTMENTS; SECURITY. (a) District bonds are legal and authorized investments for:

(1) banks, trust companies, and savings and loan associations;

(2) insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) all interest and sinking funds and other public funds of the state and agencies, subdivisions, and instrumentalities of the state, including counties, municipalities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) District bonds are eligible and lawful security for deposits of counties, municipalities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant to the bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.207. MUNICIPAL APPROVAL. (a) A district must obtain the approval of the governing body of the municipality in which it is located for bond issues for an improvement project and the plans and specifications of an improvement project financed by the bond issue before those bonds may be issued.

(b) Instead of approval of bonds by the municipality, the district before finally approving a capital improvements budget may obtain approval from the governing body of the municipality of a capital improvements budget for a period not to exceed five years. If a district obtains approval of a capital improvements budget, it may finance the capital improvements and issue bonds specified in the budget without further approval from the municipality.

(c) A district must obtain approval from the municipality of the plans and specifications of any improvement project that involves the use of the rights-of-way of streets, roads, or highways or the use of municipal land or any easements granted by the municipality.

(d) Except as provided by Section 375.263, a municipality is not obligated to pay any bonds, notes, or other obligations of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.208. COMMISSION APPROVAL. A district must obtain approval of the commission as provided by Chapter 54, Water Code, if it issues bonds to provide water, sewage, or drainage facilities. Except as expressly provided by this section and Sections 375.062 and 375.064, a district is not subject to the jurisdiction of the commission.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.209. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding

as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 15, eff. September 1, 2011.

SUBCHAPTER K. COMPETITIVE BIDDING; DISADVANTAGED BUSINESSES

Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO COMPETITIVE BIDDING ON CERTAIN CONTRACTS. (a) Except as provided by Subsection (b) of this section, Subchapter I, Chapter 49, Water Code, applies to a district contract for construction work, equipment, materials, or machinery.

(b) The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if:

(1) there is an emergency;

(2) the needed materials are available from only one source;

(3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or

(4) after solicitation, it is ascertained that there will be only one bidder.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 20, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 13, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 16, eff. September 1, 2011.

Sec. 375.222. DISADVANTAGED BUSINESSES. (a) A district shall attempt to stimulate the growth of disadvantaged businesses inside its boundaries by encouraging the full participation of disadvantaged businesses in all phases of its procurement activities and affording those disadvantaged businesses a full and fair opportunity to compete for district contracts.

(b) A district shall establish one or more programs designed to increase participation by disadvantaged businesses in public contract

awards. Each program shall be structured to further remedial goals and shall be established to eradicate the effects of any prior discrimination.

(c) The board shall review each of its disadvantaged business programs on an annual basis to determine if each program is the most effective method for remedying historical discriminatory actions. The board's review shall determine whether statistically significant disparities exist between the disadvantaged businesses in the relevant market that are qualified to undertake district work and the percentage of total district funds that are awarded to disadvantaged businesses.

(d) A program established by a district under this section must attempt to remedy any statistically significant disparities that are found to exist, and, because a program is remedial in nature, it continues only until its purposes and objectives are met as determined by the regular periodic review.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.223. SUPERSEDES OTHER LAW. This chapter states the required procedures necessary for the district to award contracts and supersedes any law or other requirement with respect to award of contracts.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER L. ELECTIONS

Sec. 375.241. TIME OF ELECTION. (a) A bond election, maintenance tax election, and any other election held in a district may be held at the same time and in conjunction with any other election.

(b) Elections shall be called and held as provided by the appropriate provisions of Chapter 54, Water Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.242. ELECTION CALLED BY BOARD. The board may call an election for the purpose of voting on any measure.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.243. PETITION REQUIRED FOR BOND ELECTION. The board may not call a bond election unless a written petition has been filed with the board requesting an election signed by the owners of:

(1) 50 percent or more of the assessed value of the property in the district as determined from the most recent certified county property tax rolls; or

(2) 50 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment under Sections 375.161, 375.163, and 375.164 as determined from the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.244. ELECTION TO APPROVE ISSUANCE OF BONDS. (a) Bonds payable in whole or in part from taxes may not be issued unless approved by a majority or any larger percentage if required by the constitution of the qualified voters in the district voting at an election held for that purpose.

(b) Bonds payable from sources other than taxes may be issued by the board, and assessments may be levied without approval at an election.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER M. DISSOLUTION

Sec. 375.261. DISSOLUTION BY BOARD VOTE. Except as limited by Section 375.264, the board of a district by majority vote may dissolve the district at any time.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.262. DISSOLUTION BY PETITION BY OWNERS. Except as limited by Section 375.264, the board shall dissolve the district on written petition filed with the board by the owners of:

(1) 75 percent or more of the assessed value of the property in the district based on the most recent certified county property tax rolls; or

(2) 75 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment under Sections 375.161, 375.163, and 375.164, according to the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.263. DISSOLUTION BY MUNICIPAL ORDINANCE. (a) The governing body of a municipality in which a district is wholly located, by a vote of not less than two-thirds of its membership, may adopt an ordinance dissolving the district.

(b) On the adoption of the ordinance, the district is dissolved, and, in accordance with Section 43.075, the municipality succeeds to the property and assets of the district and assumes all bonds, debts, obligations, and liabilities of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.20, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 17, eff. September 1, 2011.

Sec. 375.264. LIMITATION ON DISSOLUTION BY BOARD. A district may not be dissolved by its board if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.21, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 18, eff. September 1, 2011.

SUBCHAPTER N. CONTRACTS WITH DISTRICT

Sec. 375.281. CONTRACTS WITH DISTRICT. Notwithstanding any other law to the contrary, a state agency, municipality, county, other political subdivision, corporation, individual, or other entity may contract with a district without further authorization to carry out the purposes of this chapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district with territory in the extraterritorial jurisdiction of a municipality may

negotiate and enter into a written strategic partnership with the municipality under Section 43.0751.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 19, eff. September 1, 2011.

SUBCHAPTER O. DEFENSE ADJUSTMENT MANAGEMENT AUTHORITY

Sec. 375.301. LEGISLATIVE FINDINGS; PURPOSES. (a) The legislature finds that:

(1) the closure of certain defense bases has had a negative impact on the economic development of the areas within the former defense bases and the areas in the general vicinity of the former defense bases and that the creation of the specific type of authority provided for in this subchapter is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution;

(2) it is an appropriate role for a municipality to foster economic opportunity, job generation, and capital investment by promoting a favorable business climate, preparing the workforce for productive employment, and supporting infrastructure development in areas around defense bases that are intended to be annexed by the municipality; and

(3) the programs designed to create a competent and qualified workforce are essential both to the economic growth and vitality of many municipalities in this state and to the elimination of unemployment and underemployment in those municipalities.

(b) The programs authorized by this subchapter are in the public interest, promote the economic welfare of this state, and serve the public purpose of developing and diversifying the economy of this state and of eliminating unemployment and underemployment in this state.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.302. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be liberally construed in conformity with the findings and purposes stated in Section 375.301.

(b) Except as provided by this subchapter, the other provisions of this chapter apply to an authority created under this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.303. DEFINITIONS. In this subchapter:

(1) "Authority" means a defense adjustment management authority created under this subchapter.

(2) "Eligible project" means a program authorized by Section 379A.051 and a project as defined by Section 501.002 and Sections 505.151-505.156. Notwithstanding this definition, seeking a charter for or operating an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, shall not be an eligible project.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.22, eff. April 1, 2009.

Sec. 375.304. ELIGIBILITY FOR CREATION BY MUNICIPALITY. (a) The governing body of a municipality by resolution or ordinance may create an authority in an area that is:

(1) in the same county as a military installation or facility that is:

(A) closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments; or

(B) a base efficiency project as defined by Section 379B.001; and

(2) in an area that has been annexed or disannexed for full or limited purposes under Subchapter F, Chapter 43, by a municipality with a population of at least 1.1 million or is in the extraterritorial jurisdiction of a municipality with a population of at least 1.1 million and that has been annexed for limited purposes by the municipality under Subchapter F, Chapter 43.

(b) Subchapter B and Sections 375.041 and 375.042 do not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 1, eff. June 17, 2005.

Sec. 375.305. HEARING ON CREATION OF AUTHORITY. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of the municipality creates the authority, the governing body of the municipality shall hold two public hearings to consider the creation of the proposed authority. The municipality must publish notice of each public

hearing in a newspaper of general circulation in the area of the proposed authority at least seven days before each public hearing.

(b) The notice required by Subsection (a) must state:

(1) the name of the proposed authority;

(2) the date, time, and place for the public hearing;

(3) the boundaries of the proposed authority, including a map of the proposed authority; and

(4) the powers of the proposed authority, including the power to levy assessments and to impose a sales and use tax.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 2, eff. June 17, 2005.

Sec. 375.306. BOARD OF DIRECTORS. (a) The board consists of 11 directors.

(b) The municipality shall appoint four members of the board.

(c) The county in which the municipality is primarily located shall appoint four members of the board.

(d) School districts whose boundaries overlap with an authority by 5,000 or more acres shall collectively appoint three members of the board.

(e) Except for the presiding officer, directors are appointed for terms of two years. Terms of directors may be staggered, and directors may serve successive terms.

(f) A vacancy on the board is filled for the unexpired term by the governing body of the entity that appointed the director who served in the vacant position.

(g) The mayor of the municipality and the county judge of the county in which the authority is primarily located shall, alternately, appoint one director to serve as presiding officer, with the first appointment to be made by the mayor of the municipality. The presiding officers shall serve for a term of four years beginning on January 1 of the year following the appointment. The board may elect an assistant presiding officer to preside in the absence of the presiding officer or when there is a vacancy in that office. The board may elect other officers as it considers appropriate.

(h) Sections 375.061, 375.063, 375.066, and 375.068 and the limitations of Section 375.072(c) do not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 3, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 1, eff. June 17, 2011.

Sec. 375.307. QUALIFICATIONS OF DIRECTORS. (a) At least three directors appointed by the municipality and at least three directors appointed by the county must:

(1) reside in the authority; or

(2) own property in the authority.

(b) Representatives or agents of a school district whose boundaries overlap with an authority or of an institution of higher education that operates facilities within an authority may serve on the board.

(c) To be qualified to serve as a director appointed by the municipality or the county, a person who does not meet the qualifications of Subsection (a) must be:

(1) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the authority;

(2) an owner of a beneficial interest in a trust that owns property in the authority; or

(3) an agent, employee, or tenant of a person who:

(A) owns property in the authority; or

(B) is covered by Subdivision (1) or (2).

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 2, eff. June 17, 2011.

Sec. 375.308. POWERS OF THE AUTHORITY; MUNICIPALITY. (a) An authority:

(1) may plan, design, implement, develop, construct, and finance eligible projects as defined in this subchapter; and

(2) has the powers of a municipality under Chapter 378, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999, and Chapter 380.

(b) An authority may not:

(1) issue bonds or notes without the prior approval of the governing body of the municipality that created the authority;

(2) seek a charter for or operate, within the boundaries of the authority, an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code; or

(3) levy ad valorem property taxes.

(c) A municipality may not seek a charter for or operate an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, within the boundaries of the authority.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.3085. ANNEXATION OR DISANNEXATION. (a) The board may vote to annex or disannex territory to an authority.

(b) Not earlier than the 60th or later than the 30th day before the date the board votes on the annexation or disannexation, the board shall hold two public hearings to consider the annexation or disannexation. The board must publish notice of each public hearing in a newspaper of general circulation in the area of the proposed annexed or disannexed territory at least seven days before each public hearing.

(c) The notice must state:

(1) the date, time, and place for the public hearing; and

(2) the amended boundaries of the authority, including a map of the proposed annexation or disannexation of territory in the authority.

(d) If the board approves the proposed annexation or disannexation, the board shall submit the action to the governing body of the municipality for approval. The annexation or disannexation takes effect on the date the governing body of the municipality approves the annexation or disannexation by ordinance.

(e) Section 375.043 does not apply to the authority.

Added by Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 4, eff. June 17, 2005.

Sec. 375.309. MUNICIPAL ANNEXATION OF AREA IN AN AUTHORITY. (a) A municipality that creates an authority under this subchapter may annex all or part of the territory located in the authority under Chapter 43.

(b) Annexation of territory located in the authority does not affect the operation of the authority.

(c) Creation of an authority does not:

(1) affect the power of the municipality to designate all or part of an area in the authority as an industrial authority;

(2) limit a power of the municipality conferred by Chapter 42; or

(3) impose a duty on or affect the power of the municipality to provide municipal services to any area in the municipality or its

extraterritorial jurisdiction that is in the authority.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.310. AUTHORITY PLAN. (a) An authority may only develop or construct public improvements or eligible projects in areas designated in an authority plan approved by the board and the governing body of the municipality that created the authority.

(b) The plan must include the information required for a municipal reinvestment zone under Sections 311.011(b) and (c), Tax Code, for the area of the authority. For the purposes of applying those sections, the area of the authority affected constitutes a zone.

(c) The authority shall generate the plan based on the economic development needs of the property owners and constituents in the authority.

(d) After approval by the board, the authority shall submit the plan to the municipality for approval. Before taking action to approve or reject the plan, the municipality shall make a copy of the proposed plan available to the public and hold hearings and publish notice of the hearings in the manner required by Section 375.305. The notice of the public hearings must state where a copy of the proposed plan is available for inspection.

(e) The board may amend and submit the approved plan to the governing body of the municipality for approval.

(f) Before approving the authority's plan or any amendment, the municipality shall publish notice and hold hearings as required by Subsection (d).

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 5, eff. June 17, 2005.

Sec. 375.311. SALES AND USE TAX. (a) An authority may impose a sales and use tax to support or finance public infrastructure projects and eligible projects authorized under this subchapter if the tax is authorized by a majority of the qualified voters of the authority voting at an election held for that purpose in the manner provided by Sections 375.241 and 375.242.

(b) If an authority adopts the tax authorized by Subsection (a), a tax is imposed on the receipts from the sale at retail of taxable items within the authority at the rate approved by the voters. The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent.

(c) Chapter 321, Tax Code, governs the imposition, computation, administration, governance, and abolition of a tax imposed under this section.

(d) If any territory in the authority is annexed by the municipality, the municipality's sales and use tax applies in the annexed area. If the authority's sales and use tax rate, when combined with any other sales and use tax applicable in the authority, exceeds two percent, the authority's sales and use tax is abolished upon annexation.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.312. ZONING AND PLANNING. (a) An authority has the power of a municipality under Chapters 211 and 212 in the area of the authority, including an area of the authority that is in the boundaries of a municipality's limited purpose jurisdiction. On annexation of an area of the authority for full purposes by a municipality, the authority's power to regulate the area under Chapter 211 or 212 expires. The authority regains the power in an area if the municipality disannexes the area.

(b) The board may divide the authority into distinct areas as provided by Section 211.005 to accomplish the purposes of this chapter and Chapter 211.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 6, eff. June 17, 2005.

Sec. 375.313. REGIONAL DEVELOPMENT AGREEMENTS. (a) An authority may enter into regional development agreements with its creating municipality, other municipalities, counties, school districts, institutions of higher education, other political subdivisions, and private interests to:

(1) promote and advance long-term economic development in the authority; or

(2) achieve the purposes for the authority's creation and to implement the powers provided to the authority under this chapter.

(b) An authority, a municipality, a school district whose boundary overlaps with a portion of an authority, or an institution of higher education may enter into an agreement to:

(1) fund improvements to school facilities and teacher compensation of school districts or institutions of higher education in the authority; and

(2) develop programs provided for in Section 379A.051.

(c) Any agreement entered into with a school district under this section shall be designed in such a way that the school district funding under Title 2, Education Code, shall be not less than the school district would have received had the school district not entered into the agreement. This provision may be waived by a school district board of trustees by specific action suspending the provisions of this subsection.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.314. DISSOLUTION OF THE AUTHORITY. (a) The governing body of the municipality that created an authority under this subchapter may dissolve the authority.

(b) Before dissolution, the municipality shall publish notice and hold public hearings on the proposed dissolution in the manner provided in Section 375.305.

(c) On dissolution, the municipality shall assume the assets, debts, and other obligations of the authority.

(d) Subchapter M does not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.315. EFFECTIVENESS STUDY; REPORT. (a) The board of an authority shall study the effectiveness of the authority.

(b) Not later than December 31 of each even-numbered year, the board of an authority shall report to the legislature on the effectiveness of the authority. The report must:

(1) compare utility and infrastructure development in:

(A) the authority since the authority's creation; and

(B) areas in the municipality that created the authority that are not in the authority;

(2) identify methods for improving residential, commercial, and industrial development in the authority;

(3) identify limitations and impediments to development in the authority;

(4) identify methods to improve the authority's accountability to property owners in the authority; and

(5) identify any competitive advantage opportunities of the authority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 3, eff. June 17, 2011.

SUBCHAPTER P. CONSOLIDATION OF DISTRICTS

Sec. 375.351. CONSOLIDATION OF DISTRICTS. (a) Two or more districts may consolidate into one district under this subchapter if none of the districts to be consolidated has issued bonds or notes secured by assessments or ad valorem taxes, or has levied taxes.

(b) To initiate a consolidation, the board of a district shall adopt a resolution proposing a consolidation and deliver a copy of the resolution to the board of each district with which consolidation is proposed.

(c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions for the consolidation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.352. TERMS AND CONDITIONS FOR CONSOLIDATION. (a) The terms and conditions for consolidation must include:

(1) adoption of a name for the consolidated district;

(2) the number and apportionment of directors to serve on the board of the consolidated district;

(3) the effective date of the consolidation;

(4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district; and

(5) an agreement on governing the districts during the transition period, including selection of officers.

(b) The terms and conditions for consolidation may include any terms or conditions to which the board of each district agrees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.353. NOTICE AND HEARING ON CONSOLIDATION. (a) Each district's board shall publish notice and hold a public hearing in its district regarding the terms and conditions for consolidation of the districts.

(b) Notice of the hearing must be published one time in a newspaper of general circulation in the area of each district at least seven days before the date of the hearing.

(c) After the hearing, the board by resolution may approve the terms and conditions for consolidation and enter an order consolidating the districts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.354. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidated district may exercise the powers of the districts being consolidate within the respective boundaries of the original districts. For land annexed into the consolidated district, the consolidated district may exercise any of the powers of the original districts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.355. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.356. ASSESSMENT AND COLLECTION OF TAXES. If the consolidated district has taxing authority, the district shall assess and collect taxes on all property in the district uniformly, for maintenance and operation of the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.357. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR. A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

ATTACHMENT C

Letters of Commitment from Coalition Members

Economic and International Development Department

Mayor
Dee Margo

City Council

District 1
Peter Svarzbein

District 2
Alexsandra Annello

District 3
Cassandra Hernandez

District 4
Dr. Sam Morgan

District 5
Isabel Salcido

District 6
Claudia Ordaz Perez

District 7
Henry Rivera

District 8
Cissy Lizarraga

City Manager
Tommy Gonzalez

November 25, 2019

Joe Gudenrath
Executive Director
El Paso Downtown Management District
201 E. Main Street, Suite 107
El Paso, TX 79901

RE: Letter of Commitment for FY2020 EPA Brownfields Assessment Coalition Grant

Dear Mr. Gudenrath,

I am pleased to confirm the City of El Paso will be a member of the Coalition led by the El Paso Downtown Management District (DMD) and we support this Brownfields Assessment Grant Application to secure funding through the Fiscal Year 2020 Environmental Protection Agency (EPA) Brownfields Grants Program.

The City works very closely with the Downtown Management District (DMD) to encourage investment in the heart of our community — downtown. Over the last several years, we collaborated (with private developers) to build a triple-A baseball stadium which has had rippling economic development impacts for our city. In addition, we collaborated to ensure downtown is clean, vibrant, and attractive to professionals, residents, visitors, and business owners. We meet regularly to address code compliance issues, incentive agreements, and our shared redevelopment vision for downtown. In addition, we collaborated to revitalize and restore several beautiful historic gems downtown, including the O.T. Bassett Tower, the Plaza Hotel, the Mills Building, the Martin building, the Paso Del Norte Hotel, and the John Mulligan Building. Together, we also restored the iconic El Paso Streetcar and are currently building the tallest building in El Paso — the Hunt West Star Tower. Our entities partner to encourage special events in downtown, reduce permitting red tape, and incentivize façade improvements and pedestrian amenities. Downtown El Paso is the heart of our city and we understand how important it is to collaborate with the DMD to reach our strategic goals.

By allowing the Coalition to identify and assess brownfield sites and plan for their future redevelopment, the EPA Grant will support the long-term economic well-being of our community by encouraging reinvestment and economic development opportunities. Grant funding will allow the Coalition to identify and assess brownfield sites along prime commercial and industrial corridors

Jessica Herrera – Director
123 W. Mills Ave. | El Paso, Texas 79901 | (915) 212-1624

and will support our long-term community vision to revitalize our neighborhoods and economy. Creating useable properties will complement the existing efforts already set forth and encourage much-needed reinvestment, economic development, and job creation opportunities.

As noted in the executed Memorandum of Agreement (MOA) provided as an attachment to the grant application, the City has committed to leveraging our experience and resources to assist the DMD with financial management, execution and compliance with the Cooperative Agreement terms and conditions. If funds are awarded, members of our staff will also participate as a member of the Coalition and on the broader Brownfield Advisory Committee and assist with other critical tasks to help guide successful implementation of our proposed project. We appreciate being involved in this process because we believe strongly that this will help to encourage investment downtown and provide positive environmental outcomes.

If you need any additional information, please contact me at 915-212-1624 or HerreraJL@elpasotexas.gov. We look forward to collaborating with the El Paso DMD on this endeavor to revitalize our community. We sincerely appreciate the Environmental Protection Agency for allowing us to apply for these funds.

Sincerely,

Jessica Herrera
Director
Economic and International Development Department
City of El Paso
HerreraJL@elpasotexas.gov
915-212-1624

RICARDO A. SAMANIEGO
El Paso County Judge

December 2, 2019

Joe Gudenrath
Executive Director
El Paso Downtown Management District
201 E. Main Street, Suite 107
El Paso, TX 79901

RE: Letter of Commitment for FY2019 EPA Brownfields Assessment Coalition Grant

Dear Mr. Gudenrath,

Thank you for including us in the Brownfields Assessment Grant Application—the County of El Paso is very willing to participate as a member of the Brownfield Advisory Committee led by the El Paso Downtown Management District (DMD). We support this grant application to secure funding through the Fiscal Year 2020 Environmental Protection Agency (EPA) Brownfields Grants Program.

The County of El Paso and the Downtown Management District (DMD) have a strong partnership and share a vision of revitalizing our downtown as an effort to further connect our community. The County represents the regional towns, villages, and cities outside of the City of El Paso limits and we are supportive of any efforts that encourage investment, reduce environmental contamination, encourage reuse, support the long-term well-being of our community and provide opportunities to our community members. For many years, the County of El Paso supported a joint economic development specialist position which often managed agreements for investment in downtown. We will continue to support the DMD in their efforts to pull in resources to revitalize our region.

This grant funding will allow our team to support economic development while encouraging historic renovation and adaptive reuse projects in our community. Our region will not only benefit from the identification and assessment of potential brownfield sites, but also from the plans created to guide future redevelopment. If our application is selected and funds are awarded, members of our County staff will participate as a member of the Coalition and the Brownfield Advisory Committee to assist with creating the process to identify brownfield sites, select high-impact brownfield sites for assessment, and help with other important tasks related to the successful implementation of our proposed project(s).

If you would like any additional information, please contact myself or Mr. Jose Landeros at 915-546-2015 or JLanderos@epcounty.com. We look forward to partnering with the El Paso DMD on this endeavor to revitalize our community. Again, thank you for including us as a committee member for this grant application.

Sincerely,

Ricardo A. Samaniego
El Paso County Judge

500 E. San Antonio, Suite 301, El Paso, TX 79901
Phone: 915-546-2098 · Fax: 915-543-3888 · countyjudge@epcounty.com · www.epcounty.com

ATTACHMENT D

Memorandum of Agreement

17.3

CITY CLERK DEPT
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BROWNFIELDS ASSESSMENT COALITION MEMORANDUM OF AGREEMENT BETWEEN THE FOLLOWING PARTIES:

EL PASO DOWNTOWN MANAGEMENT DISTRICT, CITY OF EL PASO AND EL PASO COUNTY

This Memorandum of Agreement documents the roles and responsibilities of the parties involved in the Fiscal Year (FY) 2020 EPA Brownfields Assessment Coalition Grant. Grant applications are due on December 3, 2019 and awards will be announced by EPA in April-June 2020. Pending notice of award by EPA, a Cooperative Agreement will be established between EPA and the Lead Coalition Member (a/k/a the "Grantee") – the El Paso Downtown Management District (DMD). The grant implementation period is anticipated to be October 1, 2020 through September 30, 2023. This MOU shall automatically terminate upon termination of the EPA Brownfields Assessment Coalition Grant. The Coalition Members include the DMD, City of El Paso and El Paso County.

1. As the Lead Coalition Member, the DMD is accountable to EPA for management of the Cooperative Agreement and compliance with the statutes, regulations, and terms and conditions of the award, and ensuring all Coalition Members comply with the terms and conditions.

2. The City of El Paso and El Paso County, individually and separately, agree to advise the DMD concerning compliance with the EPA Brownfields Assessment Coalition Grant and the financial management of the grant based on each entity's separate institutional experience. The City of El Paso and El Paso County shall provide advice to the DMD only when asked directly by the DMD for advice and only regarding matters specific to the EPA Brownfields Assessment Coalition Grant. The DMD shall make, and be responsible for, all final decisions regarding grant compliance and financial management, and any other matter concerning the EPA Brownfield Coalition Grant, regardless of any advice provided by either the City or the County. For purposes of this paragraph 2, the contact person for the City shall be the City's Grant Administrator (or his/her designee); and the contact person for the County shall be Munzer Alsarraj, Infrastructure Program Manager.

3. It is the responsibility of the DMD to provide timely information to the Coalition Members regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

4. In addition to the DMD, the Coalition Members include the City of El Paso and El Paso County. Contact information for the lead project representative on behalf of each Coalition Member is provided below.

EL PASO DOWNTOWN MANAGEMENT DISTRICT
Joe Gudenrath, Executive Director
Address: 201 E. Main Street, Suite 107, El Paso TX 79901
Phone: 915-240-3116 | Email: jgudenrath@elpasodmd.org

CITY OF EL PASO
Mirella Craigo, Special Districts Program Manager
Address: 123 W. Mills Avenue Ste. 111, El Paso TX 79901
Phone: 915-212-1617 | Email: CraigoM@elpasotexas.gov

Elda Rodriguez-Hefner, Grants Administrator
Address: 300 N. Campbell, El Paso TX 79901
Phone: 915-212-1795 | Email: Rodriguez-HefnerE@elpasotexas.gov

EL PASO COUNTY
Jose M. Landeros, Director, Planning & Development
Address: 800 E. Overland, Suite 200, El Paso TX 79901
Phone: 915- 546-2015 | Email: JLanderos@EPCounty.com

Munzer Alsarraj, Infrastructure Planning Manager
Address: 800 E. Overland, Suite 200, El Paso TX 79901
Phone: 915-546-2015 | Email: MAlsarraj@epcounty.com

5. Activities funded through the Cooperative Agreement will be described in the tasks outlined in the EPA-approved Brownfields Assessment Coalition Cooperative Agreement Work Plan (referred to as the "Work Plan") to be prepared following notice of award of grant funding. Project tasks outlined in the Work Plan are anticipated to include: 1) Project Management, Reporting and Other Eligible Activities; 2) Public Outreach and Involvement; 3) Site Inventory, Prioritization and Eligibility Approval; 4) Phase I and II Environmental Site Assessments (ESAs) and Site Cleanup/Reuse Plans.

6. The DMD advanced a qualifications-based procurement process in the fall of 2019 in compliance with 2 CFR 200.317-200.326 requirements to obtain the services of a consultant to assist with grant application and implementation of EPA Brownfields Grants. The procurement process resulted in the DMD selecting a Qualified Environmental Professional (referred to as the "Consultant") to undertake various activities funded through the Cooperative Agreement to be issued following award of grant funding.

7. The DMD and Coalition Members will work to develop a site selection process based on agreed upon factors and will ensure that a minimum of five sites are assessed (including at least one site within the jurisdiction of each Coalition Member) over the life of the Cooperative Agreement. Selected sites will be submitted to the EPA for approval to ensure eligibility prior to initiating assessment and/or related activities. The Work Plan to be established with EPA will identify the number of Phase I and II ESAs, Analysis of Brownfield Cleanup Alternatives (ABCAs) and/or Cleanup Action Plans (CAPs), and Site Reuse Plans anticipated to be completed.

8. Upon designation of the specific sites, it will be the responsibility of the DMD to work with the Coalition Member in whose geographic area the site is located to finalize the scope of work for the Consultant or other contractor(s). It will be the responsibility of this Coalition Member to obtain all required permits, easements, and/or access agreements as may be necessary to undertake assessments at the selected site.

9. The DMD is responsible for ensuring that other activities as negotiated in the Work Plan are implemented in accordance with a schedule agreed upon by the DMD and the Coalition

Member in whose geographic area the site to be assessed is located.

10. It will be the responsibility of each Coalition Member to respond to requests for work items and information in a timely manner to allow the DMD to meet EPA compliance reporting deadlines and other project deadlines.

11. The City or County may terminate this MOU without cause at any time by giving written notice to DMD of termination at least thirty (30) days before the effective date of such termination.

12. To the extent permitted by law, the DMD indemnifies and holds harmless the County, its agents, and its employees from any suit, claim, damages, or any other action, at law or in equity, that may arise from the County's activities under this agreement. The DMD further waives any claims it might have against the County stemming from the County's participation in this agreement. Further, the DMD assures the County that it has obtained, or will obtain, appropriate liability coverage for its activities under this agreement and that the DMD will be solely responsible for any liability arising under the Parties collective participation in this agreement.

13. To the extent permitted by law, the DMD indemnifies and holds harmless the City of El Paso, its agents, and its employees from any suit, claim, damages, or any other action, at law or in equity, that may arise from the City's activities under this agreement. The DMD further waives any claims it might have against the City stemming from the City's participation in this agreement. Further, the DMD assures the City that it has obtained, or will obtain, appropriate liability coverage for its activities under this agreement and that the DMD will be solely responsible for any liability arising under the Parties collective participation in this agreement.

14. In assessing properties pursuant to the EPA Brownfields Assessment Coalition Grant, the permission of any participating property owner must be obtained in writing prior to any assessment.

EFFECTIVE: December 2, 2019

This MEMORANDUM OF AGREEMENT for the Brownfields Assessment Coalition led by the El Paso Downtown Management District is agreed upon by the parties below.

EL PASO DOWNTOWN MANAGEMENT DISTRICT:

Signed by: **Joe Gudenrath, Executive Director** — Date: 11/19/19

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on the 19 day of November, 2019.

Notary Public in and for the State of Texas

My Commission Expires:

Pamela Sifuentes
Notary Public, State of Texas
Comm expires • 09-10-2023
Notary ID • 13216603 - 8

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SIGNED AND AGREED:

CITY OF EL PASO

for

Tomas Gonzalez
City Manager

APPROVED AS TO FORM:

Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

for **Jessica Hererra, Director**
Economic & International Development

Sol M. Cortez
Assistant City Attorney

Margarita M. Munoz
Comptroller

SIGNED AND AGREED:
EL PASO COUNTY

Ricardo A. Samaniego

Ricardo A. Samaniego
El Paso County Judge

APPROVED AS TO FORM:

Kevin McCary
Assistant County Attorney

APPROVED AS TO CONTENT:

Jose M. Landeros, Director
Planning & Development Department

ATTACHMENT E

Interlocal Agreement

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26.2

STATE OF TEXAS §
§
COUNTY OF EL PASO §

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into on this 9th day of February, 2016, by and between the City of El Paso, Texas, a home-rule municipal corporation, ("the City") and the El Paso Downtown Management District ("DMD"), a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375.

WITNESSETH:

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the City and the DMD, 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(c), the DMD 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), the DMD desires to implement certain supplemental sanitation services for increased health, safety, and welfare of citizens to promote the accessibility and consumer traffic in downtown El Paso; and

WHEREAS, the City and the DMD believe that a cooperative agreement between the parties will provide a mutual benefit to both entities and serve the governmental purposes of stimulating commercial development and business activity in the downtown area; and

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

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

WHEREAS, on or about February 1, 2011, the Parties entered into an Interlocal Agreement ("February 2011 Interlocal") implementing activities to preserve, maintain, and enhance the economic health and vitality of the downtown El Paso area through public outreach development, downtown marketing services, and supplemental sanitation services, with the governmental purpose of stimulating commercial development and business activity in the downtown area; and

WHEREAS, the February 2011 Interlocal Agreement was amended on numerous occasions, most recently on or about October 6, 2015; and

WHEREAS, SECTION 4.2.1 Termination by Mutual Consent, of the February 2011 Interlocal Agreement states that "The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing"; and

WHEREAS, on or about November 17, 2011, the Parties entered into an Interlocal Agreement ("Façade Interlocal") regarding the administration and funding of a joint Downtown Commercial Façade Improvement Grant Program; and

WHEREAS, the Façade Interlocal Agreement was amended on May 15, 2012; and

WHEREAS, SECTION 4.2-1 Termination by Mutual Consent. of the Façade Interlocal states that "The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing."; and

WHEREAS, the parties agree it is to their mutual benefit to terminate both the February 2011 Interlocal and the Façade Interlocal agreements, effective as of the "effective date" of this Agreement; and

WHEREAS, the parties wish to enter into this Interlocal Agreement which will replace the Interlocal Agreement, dated February, 1, 2011 and the Façade Interlocal, dated November 17, 2011.

NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:

For and on behalf of the general public good and the mutual covenants and promises hereinafter set forth in this Agreement, the parties agree as follows:

1.0 CONTRACTUAL RELATIONSHIP

1.1 The parties to this Agreement are governmental entities that are entering into this contract pursuant to Chapter 791, Texas Government Code, which establishes the legal relationship between the parties. No other legal relationship is intended to be created by this Agreement, to include but not 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.

1.2 The DMD acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the DMD to any obligation other than the obligations set forth in this Agreement.

2.0 SCOPE OF SERVICES

2.1 The parties acknowledge and expressly agree that, in all things relating to this Agreement, the City and DMD are performing governmental functions, as defined by the Texas Torts Claims Act. The parties hereby agree that the City and the DMD enter into this Agreement as governmental entities for the purpose of performing a governmental function.

2.2 DMD Responsibilities:

2.2.1 Public Outreach and Development. The DMD will perform the following economic development services within the DMD area (as shown in Exhibit "A"), in connection with the City's downtown revitalization efforts:

(A) Public outreach with various stakeholders in the downtown El Paso area to improve City communication with other public entities and the private sector on downtown-related City capital projects;

(B) Conducting of meetings with potential private investors in the downtown area; and

(C) Identification of private and public funding and/or leveraging of private funds to enhance downtown-related City capital projects, streetscape enhancements, and coordination of complementary private commercial redevelopment activities.

2.2.2 Downtown Marketing Services. The DMD will perform the following economic development services within the DMD area in connection with the City's downtown revitalization efforts:

(A) Develop and implement a broad-based marketing program, which will include marketing, publicity, and media contact for the primary purpose of promoting events and activities located in the downtown area that will enhance commercial activity and attract commercial redevelopment in downtown El Paso.

(B) Operate, maintain, and update the "Downtown El Paso" website. In addition, the DMD will create, publish, and disseminate a regular newsletter promoting downtown El Paso.

(C) Direct Marketing Services For Downtown Events. Upon request from the City, the DMD may provide direct marketing-related services to promote downtown events sponsored and administered by the City as part of the Downtown marketing plan, in accordance with all applicable laws. The DMD will invoice the City for direct marketing services under this provision.

2.2.3 Supplemental Sanitation Services. The DMD shall regularly clean the sidewalks, alleys and storefronts located with the DMD area (as shown in Exhibit "A"). The term "regularly" shall mean, for purposes of this Agreement, six days per work week, Monday through Saturday, 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 DMD. DMD will provide the staff and equipment required to undertake these duties in accordance with the below guidelines.

(A) The DMD shall provide other supplemental sanitation services within the DMD area, as defined and allowed within Chapter 375 of the Texas Local Government Code, and as deemed fitting and appropriate by the DMD, within the scope of various programs and resources allowed therein. Examples of the type of supplemental sanitation services which could be selected by the DMD include, but are not limited to: daily litter collection; daily alley cleaning; illegal dumping clean-up; the collection and removal of cardboard; removal of graffiti (first floor); painting of street furniture owned by the City including street light poles; cleaning of historical markers; routine power washing of sidewalks and alleys; assistance in the cleaning of specially impacted areas before and after specific special events; sidewalk and parks trash can service; and the promotion of cleanliness and code compliance to the businesses and property owners within the DMD area.

(B) The DMD shall own, maintain, and operate the necessary equipment to perform the supplemental sanitation services pursuant to Scope of Services provided herein.

(C) The DMD shall supervise and train personnel in the operation and maintenance of the equipment. The DMD shall be solely responsible in 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 DMD may contract with responsible third parties in order to execute the supplemental sanitation services.

(D) The City, through Environmental Services Department (ESD) will Maintain current levels of non-DMD services such as Street sweeping, Graffiti Removal, etc. City will no longer contract or self-perform emptying for parks trash cans in DMD service area, ESD will no longer service downtown public right of way containers (pedestrian containers). ESD will continue any residential services.

(E) The City will provide major maintenance of pedestrian trash cans including, but not limited to, the replacement of internal hard-plastic liners and the removal/replacement of units, when necessary.

(F) The City will provide containers and disposal service for all trash collected by the DMD. A mutually agreeable location, as close to downtown as possible, will be provided by the City for disposal and for the storage of DMD vehicles/equipment.

2.2.4 Permitting for Downtown Special Events. The City and the DMD agree that the DMD will be the lead entity responsible for coordinating and administering permitting for non-mobile events held within the Downtown Plan Area that utilize public right-of-way, and in this regard the DMD shall be responsible for performing the following:

(A) Issuing and accepting special event permit applications for temporary use of City and TxDOT right-of-way for non-mobile events within the Downtown Plan Area (the "Application"), on forms to be provided by the City;

(B) Answering applicant questions about the Application and the permitting process;

(C) Providing the applicant with a fee schedule, place for payment and payment deadline schedule, and an estimated amount of all costs for services provided by the DMD and the City for the issuance of the event permit;

(D) Notifying the appropriate City departments of the filing of each Application, which may include notifying the Police, Fire, Transportation, Sun Metro, Health, Environmental Services, Parks, Convention and Visitors Bureau, and/or Museums and Cultural Affairs Departments as follows:

(1) The City Manager or designee will be the initial contact for the DMD and he will advise the DMD regarding which City departments must be notified and the contact person(s) for each respective department.

(E) Collecting Application and ancillary permit fees from the Applicant;

(F) Guiding the applicant through the special event permitting requirements and procedures, and coordinating between City departments and the applicant to complete the following, as applicable:

(1) Site Plan/Route Map/Traffic Control Plan. Obtaining from the applicant a Site Plan/Route Map/Traffic Control Plan showing the location and arrangement of all structures and vehicles to be brought onto the event site.

(2) Notice of Proposed Closure. Providing the applicant with Notice of Proposed Closure Form on which the applicant must obtain the name and address of each owner or occupant of real property abutting the boundaries of the area in which the temporary event or street closure will be conducted and a signed statement from one individual representing or constituting the owner or occupant of each property stating whether they consent to or object to the proposed event.

(3) Alcohol Permit. Informing the applicant of the steps necessary for selling and/or serving alcohol at the event, including the filing of an application for the temporary sale and service of alcoholic beverages with the Texas Alcoholic Beverage Commission (TABC).

(4) Traffic Control Permit. Informing the applicant of the steps necessary for obtaining a traffic control permit.

(5) Health Permits. Informing the applicant of the steps necessary for obtaining Health Permit(s), if selling or giving away food and/or drink items at the event.

(6) Other Permits and Licenses. Informing the applicant of the steps necessary for obtaining other necessary permits and licenses which may include an Amplification Permit, a Parking Meter Permit, and/or Vendor Permit(s) (Temporary Vendor and/or Vendor License).

(7) Park Use Permit. Informing the applicant of the steps necessary for obtaining a Park Use Permit, if the applicant is requesting the exclusive use of a park facility in the Downtown Plan Area.

(8) Fire Department Permits. Informing the applicant of the steps necessary for obtaining Fire Department Permits from the El Paso Fire Department, which may include permits for Fire Occupancy, Fire Watch/Standby, Explosives, Temporary Structures, and/or Use of Compressed Gases.

(9) Medical Services. Directing the applicant to the El Paso Fire Department to obtain information on the medical services that will be necessary for the event.

(10) Security Measures. Directing the applicant to the El Paso Police Department to obtain information on the minimum security measures that must be implemented for the event, and to obtain an approved security plan.

(11) Environmental Services. Directing the applicant to the appropriate City department to obtain the environmental services requirements (post-event removal of garbage and recyclables).

(12) Street Cleaning. Informing the applicant of post-event street cleaning responsibilities and requirements. If the applicant desires to utilize post-event City street cleaning services, the DMD will coordinate with the applicant and the City to submit the request.

(13) Insurance. Informing the applicant on the necessary insurance coverage and provisions that must be obtained, and insurance forms that must be submitted, for the event.

(14) Public Health. Informing the applicant on the number and location of portable toilets that will be required for the event, based on the City's requirements and regulations.

(15) Amplification. If amplification will be used at the event, informing the applicant of the El Paso City Code noise provisions and standards.

(16) Assisting the applicant to coordinate with the Convention and Performing Arts Center for any events held in the Convention Center, Abraham Chavez Theatre, Plaza Theatre, Arts Festival Plaza, Convention Center Parking Garage, City Hall Surface Parking lots after business hours, Anthony Parking Lot, Union Plaza Transit Terminal, and/or pedestrian pathways.

(17) Assisting the applicant to coordinate with the City for any events that will use the Museum of Art and/or the El Paso History Museum.

(G) Forwarding the application and the related materials to the appropriate City department representatives, as identified by the City Manager or designee, for review and comment;

(1) The DMD agrees to participate and advise as necessary during the application review and approval of the processes covered by this Agreement.

(2) The City agrees that a special event permit will be finally approved and issued only by the City Manager or his designee, with all rights of termination and/or rejection reserved by the City, as provided by the City Code.

(H) Notifying the applicant in writing of the City Manager or designee's approval or denial of the request. If the request is approved, the City Manager or designee will issue the permit, which will be delivered to the applicant by the DMD. If the request is denied, the DMD shall inform the applicant in writing of the appeal process on a form to be provided by the City.

(I) Records. The DMD shall enter into the City's electronic permit system each application for a special event permit and upload all required application materials to the same system. Such records shall contain, but not be limited to, the special event permit number, date of submission, date of issuance, location of event, reviewing department comments, and all required application materials. City will provide access and training to the City's electronic permit system.

(J) Online special event permit application. The DMD will implement and maintain IT services, which allow for the submittal of an online special event permit application and procure additional IT services to host a database of these applications.

2.2.5 Content Management for Kiosks to supplement the broad-based marketing program. The City and the DMD agree that the DMD will be the lead entity responsible for providing content on the existing and future city-owned kiosks and Big Belly trash can marketing panels located throughout the Downtown Plan Area and Downtown Management District, the boundaries of which are shown in Exhibit A (maps).

(A) The DMD will be responsible for the following:

(1) Provide materials that will be placed on the kiosks that is in compliance with the wayfinding sign definition approved by the City Council. Material to be placed on all the kiosks will be changed out to keep information current and accurate and to replace weathered signage, or as necessary. All material will follow the sign definition standards, as provided for in the El Paso City Code.

(2) Low-level Maintenance for the kiosks content area is to be provided by the DMD to include replacement of the content, removing graffiti, painting the kiosks at least once every three (3) years, where applicable. The DMD will inspect the kiosks at least once a quarter and report any deficiencies to City staff. Damaged or defaced signs will be replaced by the DMD.

(3) DMD staff will receive training and protocol guidelines from appropriate City staff on the proper way and necessary tools to place content on the kiosks and will follow the City's protocol in installing such content. Upon request, the DMD can provide City staff samples of the materials that will be placed on the kiosks four (4) weeks in advance of such placement.

(4) Secure funding for privately sponsored marketing materials. Such materials will be replaced by the DMD once a year. Applicants that request additional replacement of privately sponsored marketing materials may be responsible for the cost of materials and their replacement.

(5) Develop the standards for the material type, such as weight of paper and dimensions of total content area, for all materials to be placed on the kiosks, and develop a schedule for when content will be changed out if this is more frequently than once annually.

(6) Half (1/2) of the kiosks in the Downtown area will be made available for City sponsored events if a four-week notice is given to the DMD.

(7) DMD will also write-off/eliminate outstanding amounts (approximately One hundred Forty Nine Thousand and 00/100 dollars($149,000.00)) due by City to the DMD under the previous Agreement for this program.

(B) The City will be responsible for the following:

(1) Ensuring the hardware of the kiosks is in working order and provide training on the protocol guidelines to place the materials on the kiosks.

(2) High-level Maintenance for the kiosk infrastructure. If an existing kiosk is damaged beyond capabilities of the DMD—such as by a car accident— the City will take the appropriate measures to replace or remove the kiosks.

(3) Replacement of kiosks should the kiosks be damaged beyond repair as funding may be available.

(4) For content requested by the City to promote city-sponsored events only, the City shall provide the printed materials to be placed on the kiosks at least four (4) weeks in advance of the requested date of placement. The City can opt to reimburse the DMD for printing services and design and placement costs for the marketing materials.

2.3 Economic Development. City will establish and fund a senior level position within Economic and International Development Department to oversee and implement efforts specific to Downtown El Paso. This position would be a Senior Economic Development Specialist that would reside in Economic and International Development Department and would be a direct liaison to the DMD. Duties will include supervising current economic development specialist(s); overseeing the redevelopment incentive areas and current development projects in the Downtown area; and guiding the economic development efforts related to the Downtown area. These duties would be effectuated by implementing systems and means of: tracking all Downtown projects (public and private investment); compiling, maintaining and updating Downtown market data; implementing marketing and communication outreach efforts with Downtown

stakeholders and partner organizations; coordinating and being the lead/liaison on specific projects such as the upcoming streetcar route (i.e. incentives along the route, etc.), bike share program, structured parking, coordinating with One Stop Shop/Planning, MCAD and other City Depts. The Senior Economic Development Specialist will also serve to recruit private investment/promote the area to private sector. The position will evolve according to the requirements of economic development efforts identified by the City and/or DMD.

2.4 Annual Report. On a yearly basis, being on or about every month of February following the execution date of this Agreement, the DMD will submit an annual report, based on a calendar year, to City Council detailing its performance of activities under this Agreement.

2.5 Commercial Façade Improvement Program.

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

2.5.1.1 The Program requirements will include the following:

(A) There will be a one dollar-to-one dollar match up to $25,000.00 as the maximum and $1,000 as the minimum reimbursement grant amount for approved improvements per project, subject to funding availability and through a process mutually agreeable to DMD and the City.

(B) Grants will be given for façade improvements that serve to restore, rehabilitate, enhance or beautify the exterior of the structure.

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

2.5.2 Scope of Contribution And Services.

2.5.2.1 Responsibilities of the DMD:

(A) The DMD will provide all programmatic management services for administration of the joint Program and will act as the Program Administrator, in conformance with the Program guidelines, as mutually agreed to by the City and DMD. The management services will include coordinating review of applicants' projects and analyzing eligible project costs, and support staff services for application processing and review committee work. The DMD will also provide public outreach and marketing for the joint Program.

(B) In conjunction with designated CITY staff, the DMD will assist applicants with revision, design, and submittal of their projects for funding consideration. Members of the DMD's Façade Committee and two (2) CITY staff and the CITY's Historic Preservation Officer, when appropriate, will form the Review Committee to decide on the eligibility and funding of all projects under this Agreement.

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

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

2.5.2.2 Responsibilities of the City:

(A) City will participate on the application review committee as set forth in Section 2.5.2.1 (B).

2.5.2.3 Disposition of Remaining Funds. In the event this Agreement expires or is terminated as per Section 4.0 of this Agreement, any remaining balance of funds attributed to a party's contribution will be returned to that party; provided, however, any approved matching grant to be funded by the City's contribution that had been approved prior to the termination, but not yet reimbursed at the time of termination, will be reimbursed to the applicant upon successful completion of all requirements as per the conditions of the grant, with that portion of City funding treated as encumbered and not subject to return.

3.0 ALLOCATION OF EXPENSES AND CONTRIBUTION FOR SERVICES

3.1 In consideration of the DMD performing the sanitation services as set forth in Section 2.2.3, the City hereby agrees to pay an amount not to exceed One Million, One Hundred Seventy-Six Thousand, Three Hundred Fourty-Four and 00/100 Dollars ($1,076,344.00), which will be paid out according to the following payment schedule:

(A) Within thirty (30) days of the execution of this Agreement by both parties, the City shall pay the sum of One Hundred Twenty-Eight Thousand, Three Hundred Thirty-Four and 00/100 Dollars ($128,334.00);

(B) Thereafter on October 1, 2016, the City shall pay the sum of Two Hundred Twenty Six Thousand Six Hundred and No/100 Dollars ($226,600.00);

(C) Thereafter on October 1, 2017, the City shall pay the sum of Two Hundred Thirty Three Thousand Three Hundred Ninety Eight and No/100 Dollars ($233,398.00);

(D) Thereafter on October 1, 2018, the City shall pay the sum of Two Hundred Forty Thousand Four Hundred and No/100 Dollars ($240,400.00);

(E) Thereafter on October 1, 2019, the City shall pay the sum of Two Hundred Forty Seven Thousand Six Hundred Twelve and No/100 Dollars ($247,612.00).

3.1.1 The DMD agrees to provide to the City a final accounting of the actual costs associated with providing the supplemental sanitation services as set forth in Section 2.2.3, to be delivered prior to the expiration or termination of this Agreement. The final accounting is for the purpose of City verification that it paid no more than the City's proportionate share as identified in Section 3.2.

3.2 The awarding and performance of any payment or contribution set forth herein 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 for the City of El Paso not appropriating the funds, the City shall have no obligation to pay or perform any services related here 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 of Directors 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 determine by mutual consent whether the Agreement will be terminated or amended.

3.3 In consideration of the DMD supplementing and coordinating the downtown special event permitting services as set forth in Section 2.2.4:

(A) the DMD will collect or cause to be collected from the applicant, in the manner directed by the City Manager or designee, the Application fee, the special event permit fees, street closure fees, and any service fees (such as traffic control, fire and medical plan review fees, parking meter rental fee, street/right-of-way cleaning costs, fire guards, and/or police security services), that are due and owing to the City pursuant to applicable City ordinances and City Charter; and

(B) the City agrees to pay the DMD an annual flat fee of Six Thousand Five Hundred and No/100 Dollars ($6,500.00) which covers the DMD's fixed costs and the processing of up to ten (10) applications per year, Applications processed by the DMD during a contract year in excess of ten (10) will be paid at a rate of Six Hundred Fifty and No/100 Dollars ($650.00) per excess application. The City will pay the DMD the annual flat fee on the same schedule as set out above in Section 3.1.A – E. Should the applications processed by the DMD during a contract year exceed ten (10), the City will pay the DMD the additional amount owed for the processing of the excess application(s) for the previous year at the time that the annual payment for the forthcoming year is paid. The DMD will document any additional amount owed by the City on its annual report filed pursuant to section 2.4.

3.4 In consideration of the DMD performing the Content Management for downtown Kiosks to supplement the broad-based marketing program services as set forth in Section 2.2.5, the City hereby agrees to pay reasonable reimbursable expenses & actual costs related to the replacement of Wayfinidng mapping panels as outlined in 2.2.5.(A)(2), above.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall become effective on the date of approval of the last signatory to the Agreement (the "effective date") and shall terminate on September 30, 2020, unless sooner terminated as hereinafter provided.

4.2 Termination. Except as otherwise expressly provided, this Agreement may be terminated as provided herein.

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

4.2.2 Termination for Cause. It is further understood and agreed by the City and DMD that either party may terminate this Agreement in whole or in part, as provided below:

Such termination for cause may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of thirty (30) consecutive calendar days to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

4.2.3 Termination Without Cause. This Agreement may be terminated by either party for any reason, or for no reason whatsoever upon one hundred twenty (120) days prior written notice to the other party.

5.0 GOVERNMENTAL FUNCTION AND IMMUNITY

5.1 Governmental Function. The City and the DMD expressly agree that, in all things relating to this Agreement, the parties enter into this Agreement for the purpose of performing governmental functions and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of each party, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

5.2 Sovereign Immunity. The City and the DMD reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. The parties expressly agree that neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its powers or functions or pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules, or regulations.

6.0 RISK ALLOCATION – LIMITATION OF LIABILITY

6.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

6.1.1 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 a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

6.1.2 Intentional Risk Allocation. The City and the DMD each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

6.1.3 No Indemnification. The parties expressly agree that, except as provided herein, neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

6.1.4. Fines and Penalties. Each party shall be solely responsible for fiscal penalties, fines or any other sanctions occasioned as a result of a finding that violations of any applicable local, state or federal regulations, codes or laws occurred as a result of that parties actions, except as may be specifically provided by law.

7.0 INSURANCE

7.1 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 minimum 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, all subject to a policy year aggregate limit of not less than $1,000,000.00. The DMD shall produce a copy of the insurance polic(ies), which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to the City prior to the effective date of this Agreement. Further, the insurance policy must contain endorsements which: (1) name the City as an additional insured and (2) include the City, as additional insured, under its cancellation clause, providing thirty (30) days prior written notice of cancellation or non-renewal to all insured, except for cancellation for non-payment of premium. Notwithstanding the foregoing, the DMD shall give written notice to the City within five (5) days of receipt of any notice of policy cancellation or non-renewal. The DMD shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

8.0 RECORDS

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

8.2 The DMD acknowledges that City is a governmental entity subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The City will process all open records requests in accordance with the Act and will notify the DMD of any requests received which are related to this Agreement or services/work described in this Agreement. The DMD understands that the City will require DMD's full cooperation in its response to any open records request.

9.0 GENERAL PROVISIONS

9.1 Compliance with Laws. In the performance of their obligations under this Agreement, the parties shall comply with all applicable federal, state or local laws, ordinances and regulations.

9.2 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City.

9.3 Venue. The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in the El Paso County, Texas.

9.4 Current Revenues. Pursuant to Section 791.001(d)(3), Texas Government Code, each party paying for the performance of governmental functions or services will make those payments from current revenues available to the paying party.

9.5 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be

construed as a waiver of any continuing or succeeding breach of such provision, a waiver or the provision itself, or a waiver of any right under this Agreement.

9.6 Amendment; Assignability. This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner without the written consent of the other party.

9.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected; and in lieu of each provision which to be illegal, invalid or unenforceable, there will be added as part of this Agreement, a provision which preserves the intention of the unenforceable provision, but which complies with the law.

9.8 Section Headings. The paragraph or section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

9.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

9.10 Notices. Any notice, demand, request, consent or approval that either party may or is required to provide to the other, shall be in writing and either personally delivered or sent via United States Postal Service certified mail return receipt requested, addressed to the other party at the following address(es) provided below:

CITY:	City of El Paso Attention: City Manager P.O. Box 1890 El Paso, Texas 79950-1890
Copy to:	City of El Paso Attn: Managing Director, Quality of Life P.O. Box 1890 El Paso, Texas 79950-1890
DMD:	El Paso Downtown Management District 201 E. Main, Suite 107 El Paso, Texas 79901 Attention: President, Board of Directors

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

9.11 Execution and Counterparts. This Agreement may be executed in any number of counterparts; each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

9.12 Complete Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and this Agreement, together with any Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

9.13 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of each party warrants that he/she has the authority to do so and to bind each party to this Agreement and all the terms and conditions contained herein.

9.14 Warranty of Capacity to Perform. The DMD 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.

9.15 Discrimination Prohibited. 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.

9.16 Survival. 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.

[Signature Pages Follow]

CITY CLERK DEPT.
2016 FEB -4 PM 4:45

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

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:

Bryan Crowe, Managing Director
Quality of Life

EL PASO DOWNTOWN
MANAGEMENT DISTRICT ("DMD")

Jamie Gallagher, President
Board of Directors

ATTEST:

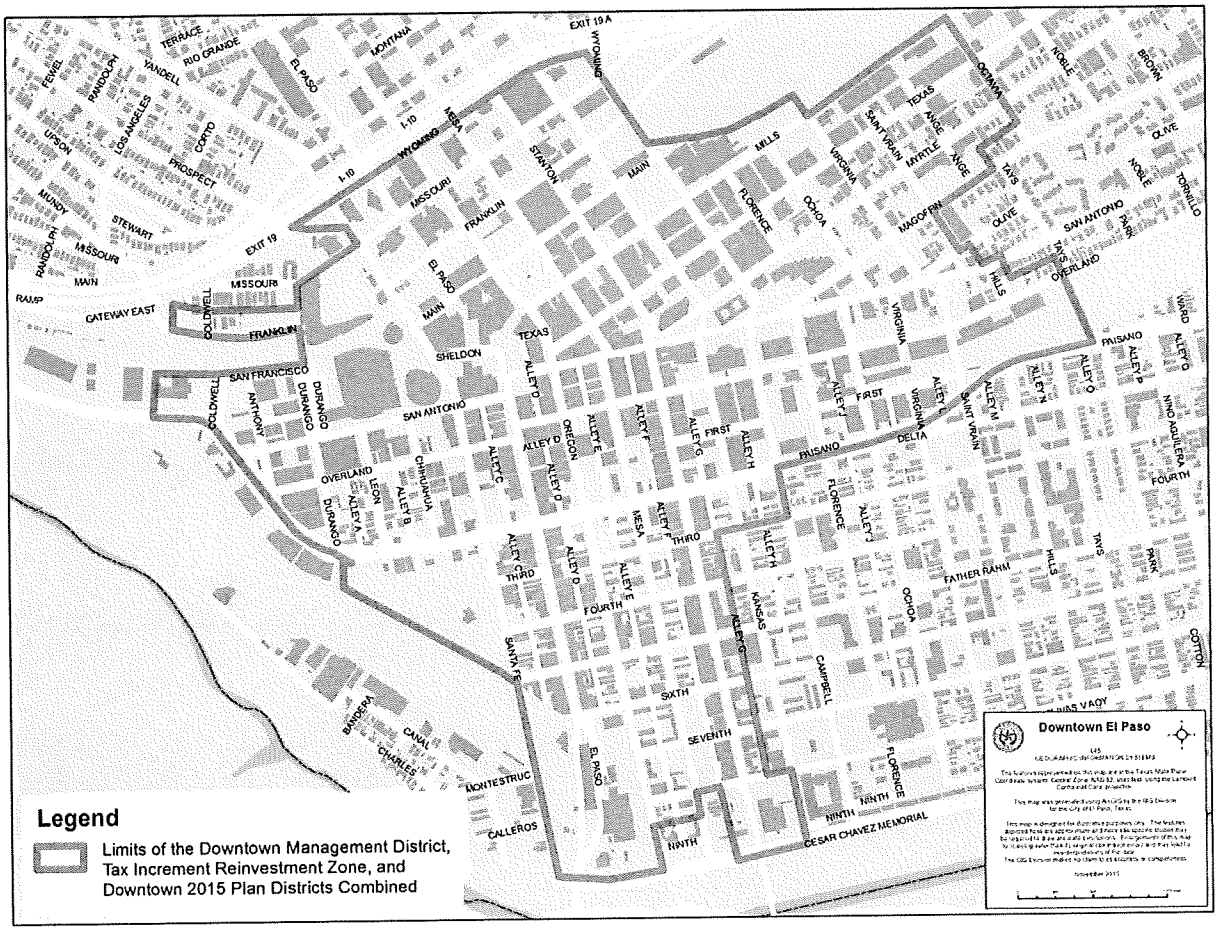
By:
Michael D. McQueen, Secretary

Exhibit "A"

Downtown Management District boundary:

Exhibit "B"

Exhibit "B"


Legend
Limits of the Downtown Management District, Tax Increment Reinvestment Zone, and Downtown 2015 Plan Districts Combined
Downtown El Paso
EXIT 19A
WYOMING
MONTANA
TERRACE
RIO GRANDE
EL PASO
I-10
MISSOURI
FRANKLIN
STANTON
MAIN
MILLS
TEXAS
SAINT VRAIN
MYRTLE
AUGE
OCHOA
VIRGINIA
FLORENCE
MAGOFFIN
SAN ANTONIO
OVERLAND
HILLS
TAYS
OLIVE
NOBLE
BROWN
TORNILLO
PRISANO
ALLEY O
ALLEY P
ALLEY N
ALLEY M
ALLEY L
ALLEY K
ALLEY J
ALLEY H
ALLEY G
ALLEY F
ALLEY E
ALLEY D
ALLEY C
ALLEY B
ALLEY A
FIRST
DELTA
NINO AQUILERA
FOURTH
THIRD
NESA
OREGON
CHIHUAHUA
LEON
DURANGO
ANTHONY
SAN FRANCISCO
GOLDWELL
SHELDON
EXIT 19
MISSOURI
MAIN
GATEWAY EAST
FRANKLIN
RANDOLPH
STEWART
MUNDY
UPSON
LOS ANGELES
CORTO
PROSPECT
YANDELL
FEWEL
RAILSP
FATHER RAHM
KANSAS
CAMPBELL
SIXTH
SEVENTH
NINTH
SANTA FE
BARDEN
CANAL
CHARLES
MONTESTRUC
CALLEROS
CESAR CHAVEZ MEMORIAL
PARK
COTTON
VARGAS

26.2

CITY CLERK DEPT.
2016 FEB -4 PM 4:46

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 "DMD") for the DMD to perform certain services, subject to the terms and conditions in the Interlocal Agreement.

APPROVED this 9th day of February 2016.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:

Bryan Crowe, Managing Director
Quality of Life

474216 / 13-1007-923 / Resolution – Interlocal Agreement (2016) / JSG

18.3

CITY CLERK DEPT
2017 JUN -6 AM 9:48

STATE OF TEXAS §
§ **FIRST AMENDMENT TO INTERLOCAL AGREEMENT**
COUNTY OF EL PASO §

This First Amendment to Interlocal Agreement ("Amendment") is entered into on this 13th day of June, 2017, by and between the City of El Paso, Texas, a home-rule municipal corporation, ("the City") and the El Paso Downtown Management District ("DMD"), a Texas Municipal Management District, organized under Texas Local Government Code Chapter 375.

WITNESSETH:

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments and political subdivisions, including the City and the DMD, 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(c), the DMD desires to implement activities to preserve, maintain, and enhance the economic health and vitality of the downtown El Paso area; and

WHEREAS, the City and the DMD believe that a cooperative agreement between the parties will provide a mutual benefit to both entities and serve the governmental purposes of stimulating commercial development and business activity in the downtown area; and

WHEREAS, on February 9th, 2016, the City and the DMD entered into an Interlocal Agreement ("Agreement") to authorize the DMD to perform certain services, subject to the terms of the Agreement; and

WHEREAS, the parties wish to include additional services to the Agreement; and

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

NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:

For and on behalf of the general public good and the mutual covenants and promises hereinafter set forth in this Agreement, the parties agree as follows:

Section 1. Section 2.5 of the Agreement is amended in its entirety to read as follows:

2.5 Commercial Façade Improvement Program.

2.5.1 Purpose of the Program. The purpose of the Downtown Commercial Façade Improvement Grant Program ("Joint Program") is to provide match grant funding to existing businesses and/or property owners to encourage improvement and rehabilitation of the exterior of privately owned buildings that are located in the Zone, the Downtown 2015 Plan area, and in those areas within the boundaries of the DMD, which are not within the Downtown 2015 Plan or the Zone (collectively, the "Program Area"). For the purposes

of this Agreement; the term "Façade" will refer to the principal face of the building and more generally can reference any side of the building facing a street, garden, or public space. Grants will be awarded for façade improvements that serve to restore, rehabilitate, enhance or beautify the exterior of the structure. The geographic areas that encompass the Program Area are specifically set forth in Exhibit "B", attached hereto and made a part of this Agreement. Within the Program Area will be two, additional geographic areas, which will be targeted to receive specific façade-related grants. The first area is Target Area One ("TA1") and is specifically described in Exhibit "C", attached hereto and made a part of this Agreement. The second area is Target Area Two ("TA2") and is specifically described in Exhibit "D", attached hereto and made a part of this Agreement.

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

2.5.2 Available Improvement Funding Grants.

2.5.2.1 Standard Commercial Façade Improvement: Standard Commercial Façade Improvements will be defined as exterior rehabilitation and/or the renovation of the exterior of a structure to include the principal face(s) of a building. For the purposes of this policy the principal face of a building will be defined as the exterior portion of the building that faces the street of higher classification within the City of El Paso's adopted thoroughfare plan, included in this document as "Exhibit E". In cases where adjacent streets are of the same classification, DMD staff shall determine the main street based on the orientation of adjacent buildings along the same block face. Grants will be given for façade improvements that serve to restore, rehabilitate, enhance or beautify the exterior of the structure.

2.5.2.2 Signature Rooftop Signage Improvement: Signature Rooftop Signage improvements will be defined as historic and/or artistic signage that is not used for brand advertising or any other revenue generating purpose. Rooftop signs, blade signs, and prominent parapet lighting will all be eligible. Rooftop art, so long as it is lit at night, will be reviewed on a case by case basis.

2.5.3 Program Requirements.

2.5.3.1 The Program requirements for projects within the TA1 geographic area will include the following:

(A) For projects designated as eligible to receive a "Standard Commercial Façade Improvement" grant according to Section 2.5.2.1; there will be a one dollar-to-one dollar match up to $25,000.00 as the maximum and $1,000 as the minimum reimbursement grant amount for approved improvements per project, subject to funding availability and through a process mutually agreeable to DMD and the City.

(B) For projects designated as eligible to receive a "Signature Rooftop Signage" grant according to Section 2.5.2.2; there will be a two public dollars-to-one private dollar match up to $25,000.00 as the maximum and $1,000 as the minimum reimbursement grant amount for approved improvements per project, subject to funding availability and through a process mutually agreeable to DMD and the City. To be eligible for "Signature Rooftop Signage" grant funding, the applicant must be willing to sign the Bright Skies Memorandum of Understanding (BS-MOU) as written by Progress 321 and included in this document as "Exhibit F".

2.5.3.2 The Program requirements for projects within the TA2 geographic area will include the following:

(A) For projects designated as eligible to receive a "Standard Commercial Façade Improvement" or "Signature Rooftop Signage" grant according to Section 2.5.2.1 and 2.5.2.2, respectively; there will be a two public dollars-to-one private dollar match up to $25,000.00 as the maximum and $1,000 as the minimum reimbursement grant amount for approved improvements per project, subject to funding availability and through a process mutually agreeable to DMD and the City.

2.5.4 Scope of Contribution And Services.

2.5.4.1 Responsibilities of the DMD:

(A) The DMD will provide all programmatic management services for administration of the joint Program and will act as the Program Administrator, in conformance with the Program guidelines, as mutually agreed to by the City and DMD. The management services will include coordinating review of applicants' projects and analyzing eligible project costs, and support staff services for application processing and review committee work. The DMD will also provide public outreach and marketing for the joint Program.

(B) In conjunction with designated CITY staff, the DMD will assist applicants with revision, design, and submittal of their projects for funding consideration. Members of the DMD's Façade Committee and two (2) CITY staff and the CITY's Historic Preservation Officer, when appropriate, will form the Review Committee to decide on the eligibility and funding of all projects under this Agreement.

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

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

2.5.4.2 Responsibilities of the City:

(A) City will participate on the application review committee as set forth in Section 2.5.4.1 (B).

2.5.5 Funding.

2.5.5.1 Annual Allocation. Beginning in calendar year 2018, the City will contribute Seventy-Five Thousand and 00/100 dollars ($75,000.00) to the Commercial Façade Improvement Program.

2.5.5.2 Scope of Contribution. Funds allocated to the Commercial Façade Improvement Program will be used to fund any of grants identified in Section 2.5.2 above.

2.5.5.2 Disposition of Remaining Funds. In the event this Agreement expires or is terminated as per Section 4.0 of this Agreement, any remaining balance of funds attributed to a party's contribution will be returned to that party; provided, however, any approved matching grant to be funded by the City's contribution that had been approved prior to the termination, but not yet reimbursed at the time of termination, will be reimbursed to the applicant upon successful completion of all requirements as per the conditions of the grant, with that portion of City funding treated as encumbered and not subject to return.

Section 2. The Agreement is amended to add a Section 2.6 as follows:

2.6 Bicycle Rack Program

2.6.1 Purpose. The City and the DMD wish to work closely in order to ensure that the City of El Paso is one of the most bicycle friendly cities in the country and to ensure that the City of El Paso has a complete network of bicycle friendly infrastructure. The City and the DMD wish to work together to enact a Bicycle Rack Program ("Bike Rack Program") that will contribute to these goals. Pursuant to Section 15.08.120(H)(19) of the El Paso City Code, the City authorizes the DMD to install bicycle racks ("Bike Racks") on the public right-of-way provided that the DMD complies with all terms described under Section 2.6 Bicycle Rack Program to this Agreement.

2.6.2 DMD Obligations.

2.6.2.1 The DMD will develop the policies, forms, and budget for the Bike Rack Program. The DMD will not charge applicants a fee for participation in the Bike Rack Program.

2.6.2.2 The DMD will ensure that all applicants under the Bike Rack Program sign an agreement that releases the City and the DMD 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 DMD and that the applicant does not have any exclusive rights to the use of the Bike Racks.

2.6.2.3 The DMD will administer the Bike Rack Program in accordance to the policies of the Bike Rack Program.

2.6.2.4 The DMD will purchase, at the DMD's own expense, the Bike Racks in accordance to the DMD's policies for the Bike Rack Program.

2.6.2.5 The DMD will, at its own expense, install remove, and/or relocate Bike Racks under the Bike Rack Program.

2.6.2.6 Prior to approving any applications and installing any Bike Racks under the Bike Rack Program, the DMD will obtain the approval of the Permit Official, or designee for every Bike Rack that will be placed on City right-of-way.

2.6.2.7 Prior to approving any applications and installing any Bike Racks under the Bike Rack Program, the DMD will provide the Permit Official, or designee, with all plans and documents required by the Permit Official, or designee, to evaluate whether the placement of the Bike Racks complies with all federal, state, and local requirements.

2.6.2.8. The DMD will maintain all Bike Racks under the Bike Rack Program operational at all times.

2.6.2.9 The DMD will maintain all Bike Racks under the Bike Rack Program clean, presentable, and free from vandalism at all times.

2.6.2.10 The DMD will keep an accurate inventory of the locations of all Bike Racks installed under the Bike Rack Program. The DMD will use the City's record keeping system to maintain the inventory as required under this provision.

2.6.3 City Obligations. The Permit Official will review all requests to install, remove, replace, or relocate

a Bike Rack forwarded by the DMD under the Bike Rack Program.

2.6.4 Removal of Bike Racks after termination of Agreement. Immediately after the expiration or termination of this Agreement, the DMD will either remove all Bike Racks under the Bike Rack Program or seek a special privilege, license, franchise, or other permit for the Bike Racks.

2.6.5 Ownership of the Bicycle Racks installed under the Bike Rack Program. Notwithstanding anything to the contrary, the DMD acknowledges that all Bike Racks installed under the Bike Rack Program will remain property of the DMD.

2.6.6 Expenses. Unless expressly provided otherwise, the DMD will exercise all rights and obligations under Section 2.6 of this Agreement at the DMD's own expense and without a right to seek reimbursement from the City.

2.6.7 No Property Rights. Nothing in Section 2.6 of this Agreement grants any real property interests to the DMD nor gives rise to any vested right in the DMD to any City rights-of-way. Nothing in Section 2.6 authorizes the DMD to regulate the placement of items on City rights of way.

2.6.8 Revocation of authorization. The City, through the City Council, may revoke the authority granted under this Section 2.6 by formal resolution enacted by City Council. If the City Council enacts a resolution under this Section 2.6.8, then Section 2.6 will be considered to be removed from this Agreement in accordance to the resolution enacted by the City Council.

2.6.9 Removal of Authorized and Non-Authorized Items at City's request. The City will retain sole and exclusive control over the public right-of-way. The DMD will remove or relocate Bike Racks, from the right-of-way upon written request from the Permit Official. The DMD will remove or relocate the Bike Racks within the timeframes provided by the Permit Official in the written request pursuant to this Section 2.6.9. Immediately after removal, the DMD will restore the right-of-way to its original condition. If the DMD does not remove the requested Bike Rack(s) pursuant to this Section, then the City may remove the items and invoice the DMD for the costs incurred. The DMD will pay such invoiced costs within 30 calendar days of receipt.

Section 3. The Agreement is amended to add the following Exhibits:

Exhibit C: Target Area One ("TA1")

Exhibit D: Target Area Two ("TA2")

Exhibit E: City of El Paso's adopted thoroughfare plan

Exhibit F: Bright Skies Memorandum of Understanding (BS-MOU)

Section 4. Except as amended in this Amendment, all terms of the Agreement remain in full force and effect.

[Signatures begin on the following page]

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

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Deputy City Manager
Economic Development & Tourism

EL PASO DOWNTOWN
MANAGEMENT DISTRICT ("DMD")

Jamie Gallagher, President
Board of Directors

ATTEST:

By:
Michael D. McQueen, Secretary

Exhibit C

[Target Area One ("TA1")]

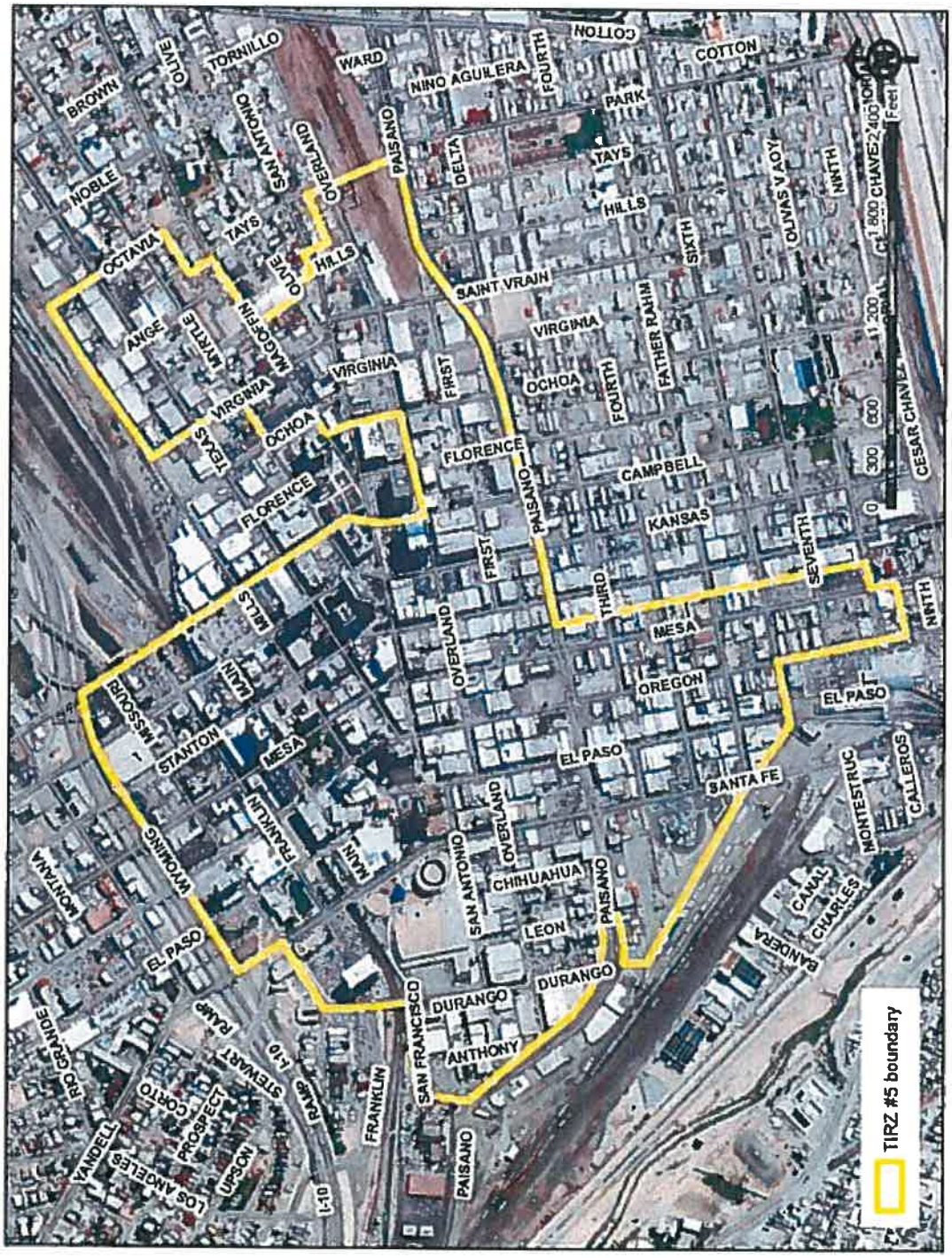


Exhibit D

[Target Area Two ("TA2")]

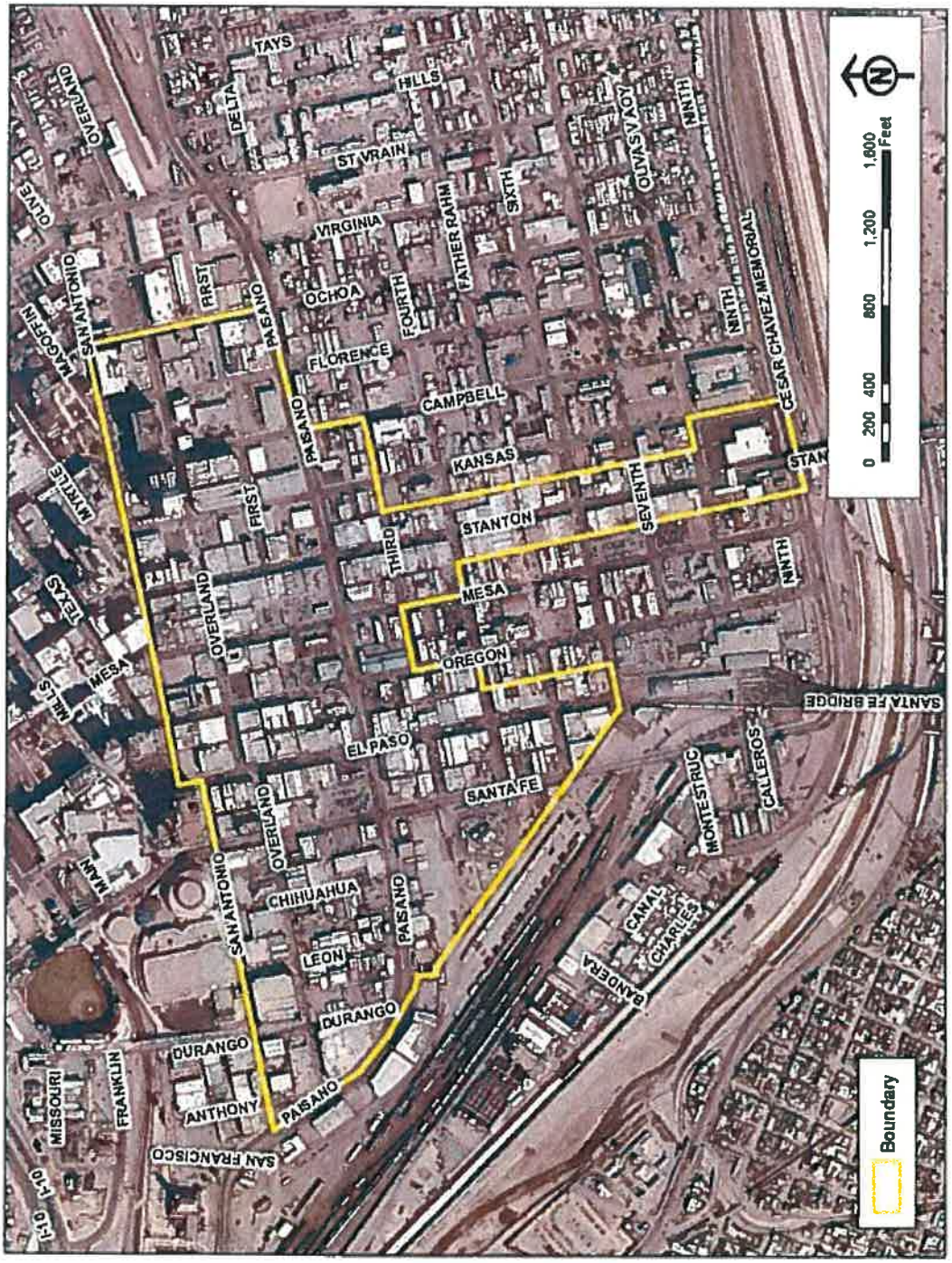


Exhibit E

[City of El Paso's adopted thoroughfare plan]

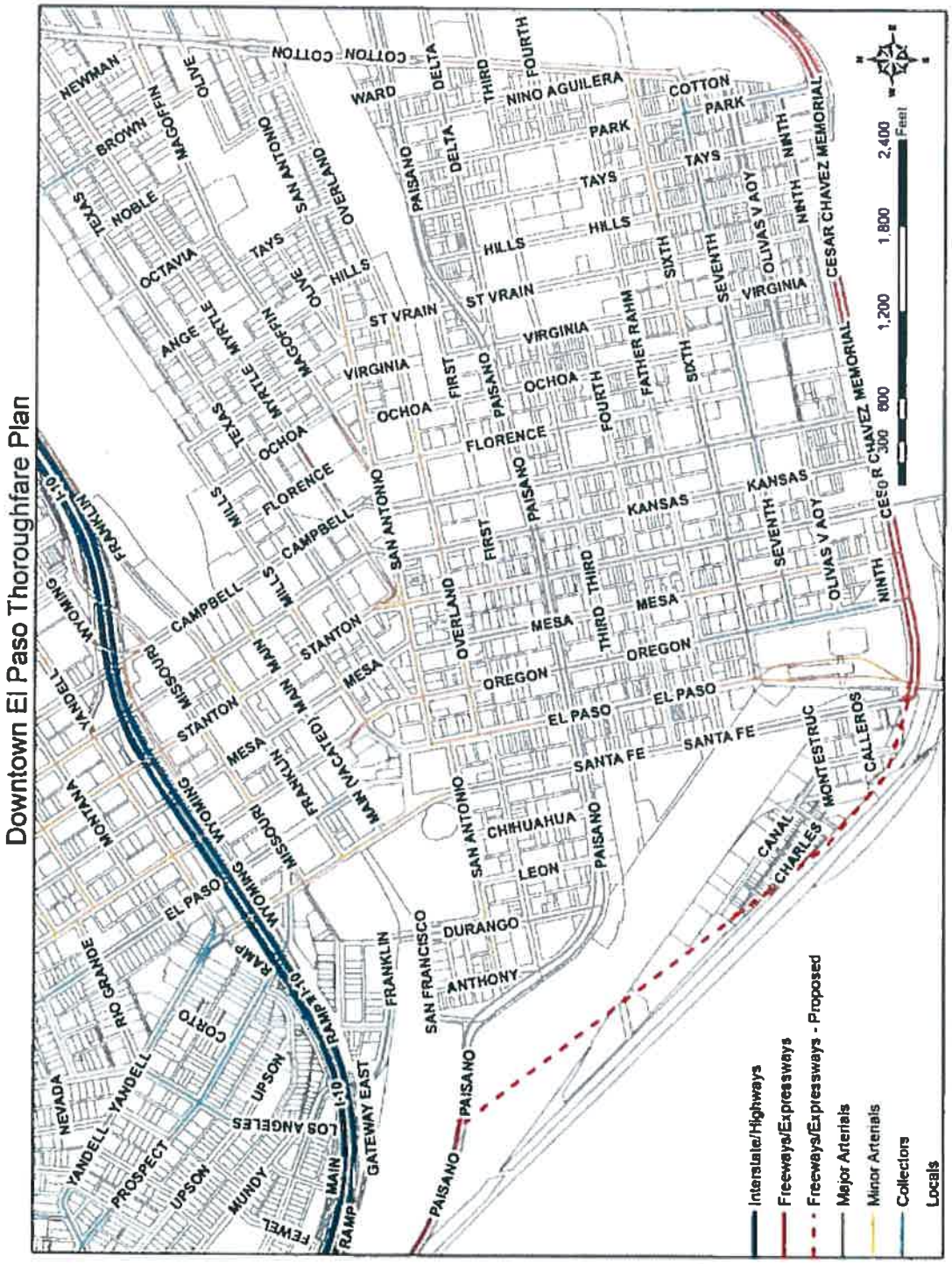


Exhibit F

[Bright Skies Memorandum of Understanding (BS-MOU)]

Bright Skies Initiative

About Us

Progress321 is a non-profit organization that exists to make the Paso del Norte region the next "best place to live and work" by empowering and connecting professionals across sectors, disciplines, generations and cultures.

Our Goal

Our goal is to recruit, empower, and develop vibrant and active young professionals to improve the region's economy and quality of life.

Progress321 is leading an initiative to light up the downtown El Paso skyline to bolster the exciting development projects already happening on the ground level.

As a group, we are committed to brightening up downtown El Paso by helping building owners conduct due diligence and identify City incentive programs. We have a goal of bringing back five notable monument signs to El Paso's skyline over the next year, including targets like the Plaza Hotel, Blue Flame Building, Bassett Tower, Cortez Building, and American Furniture. We will support efforts between building owners and the City of El Paso to get these signs operable with commitments from private interests to maintain and power these signs.

Why is this project important?
With residential buildings and hotels opening in downtown El Paso, Progress321 is working to revitalize the streets by providing historic and functional lighting in the streets to support growth and expansion in the community.

Do I need a functioning sign?
No, Progress321 can coordinate on your behalf to get an estimate to either repair or recreate a sign.

My building is considered a historic site – isn't that a problem for façade improvements?
Having worked with the City on the renovation of the Martin Building, our team leader is very familiar with the requirements for this kind of improvement.

How much will it cost?
Each case will be different based on the existing condition of the sign; however, $2 for $1 funding match is available through the Tax Increment Reinvestment Zone and Downtown Management District. The Progress 321 committee will help coordinate between the City's Economic Development office to facilitate the process for applying for the Downtown Façade Improvement Grant Program, which provides a dollar to dollar match of up to $25,000.

APPLICANT / AGREEMENT PARTICIPANT agrees and consents to adhere to the Signature Rooftop Signage grant requirements as well as this Bright Skies Initiative Memorandum of Understanding:

Signature: _____
Printed Name: _____

18.3

CITY CLERK DEPT.
2017 JUN -6 AM 9:48

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, the First Amendment to Interlocal Agreement between the City of El Paso (the "City") and the El Paso Downtown Management District (the "DMD") in order to allow the DMD to administer additional Façade Improvement Funding Grants and the newly-implemented Bicycle Rack Program.

APPROVED this 13th day of June 2017.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

Cary S. Westin, Deputy City Manager
Economic Development & Tourism

Date 07/10/2017
A true and correct copy, I do hereby certify
City Clerk

686920 | 17-1036-1343 | Resolution DMD 1st Amendment | OAR

OMB Number: 4040-0004
Expiration Date: 12/31/2019

Application for Federal Assistance SF-424

* 1. Type of Submission:
- [ ] Preapplication
- [x] Application
- [ ] Changed/Corrected Application

* 2. Type of Application:
- [x] New
- [ ] Continuation
- [ ] Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received: 12/03/2019

4. Applicant Identifier:

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name: El Paso Downtown Management District

* b. Employer/Taxpayer Identification Number (EIN/TIN):

* c. Organizational DUNS: 8098385630000

d. Address:

* Street1: 201 E. Main Drive
Street2: Suite 107
* City: El Paso
County/Parish:
* State: TX: Texas
Province:
* Country: USA: UNITED STATES
* Zip / Postal Code: 79901-1374

e. Organizational Unit:

Department Name:

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr.
* First Name: Joe
Middle Name:
* Last Name: Gudenrath
Suffix:

Title: Executive Director

Organizational Affiliation:
El Paso Downtown Management District

* Telephone Number: 915-240-3116
Fax Number:

* Email: jgudenrath@elpasodmd.org

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

D: Special District Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

Environmental Protection Agency

11. Catalog of Federal Domestic Assistance Number:

66.818

CFDA Title:

Brownfields Assessment and Cleanup Cooperative Agreements

*** 12. Funding Opportunity Number:**

EPA-OLEM-OBLR-19-05

* Title:

FY20 GUIDELINES FOR BROWNFIELD ASSESSMENT GRANTS

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment | Delete Attachment | View Attachment

*** 15. Descriptive Title of Applicant's Project:**

El Paso Downtown Management District - Brownfield Assessment Coalition Grant Program

Attach supporting documents as specified in agency instructions.

Add Attachments | Delete Attachments | View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant TX-016 * b. Program/Project TX-016

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment | Delete Attachment | View Attachment

17. Proposed Project:

* a. Start Date: 10/01/2020 * b. End Date: 09/30/2023

18. Estimated Funding ($):

* a. Federal	600,000.00
* b. Applicant	0.00
* c. State	0.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	600,000.00

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on .

☒ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

☐ Yes ☒ No

If "Yes", provide explanation and attach

Add Attachment | Delete Attachment | View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. * First Name: Joe

Middle Name:

* Last Name: Gudenrath

Suffix:

* Title: Executive Director

* Telephone Number: 915-240-3116 Fax Number:

* Email: jgudenrath@elpasodmd.org

* Signature of Authorized Representative: Lauren D Baldwin * Date Signed: 12/03/2019