

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 13<sup>th</sup> 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 9<sup>th</sup>, 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

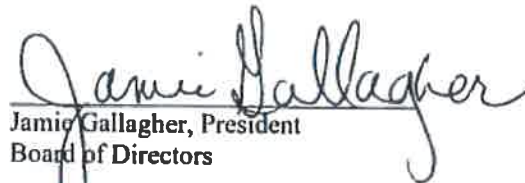
APPROVED AS TO FORM:

  
Omar A. De La Rosa  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Cary S. West, Deputy City Manager  
Economic Development & Tourism

EL PASO DOWNTOWN  
MANAGEMENT DISTRICT ("DMD")

  
Jamie Gallagher, President  
Board of Directors

ATTEST:

  
By: Michael D. McQueen, Secretary

17-1036-1343-PL#657760  
017 Jun - 8 AM 9:48



Exhibit C

[Target Area One ("TA1")]

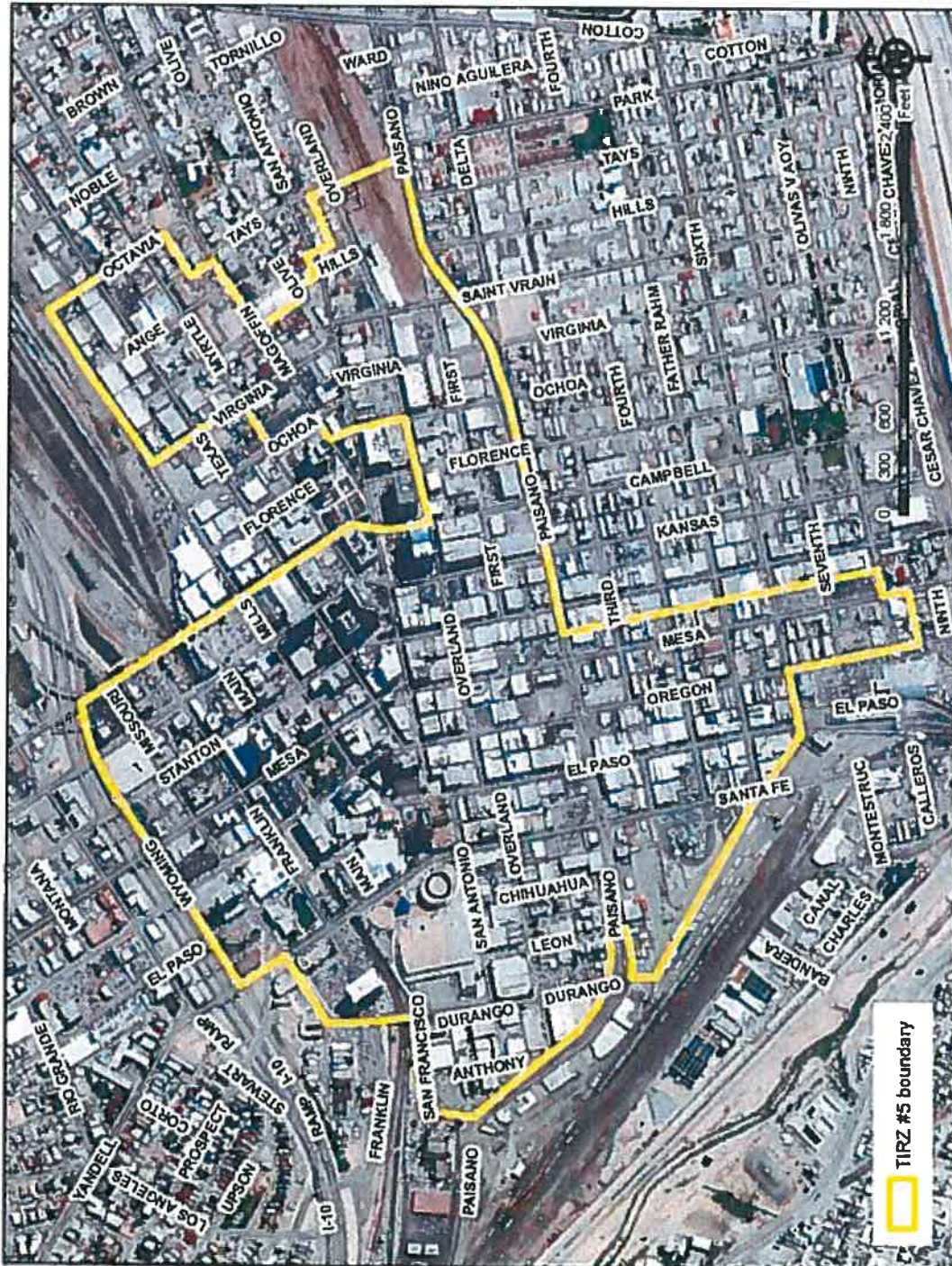










Exhibit F

[Bright Skies Memorandum of Understanding (BS-MOU)]



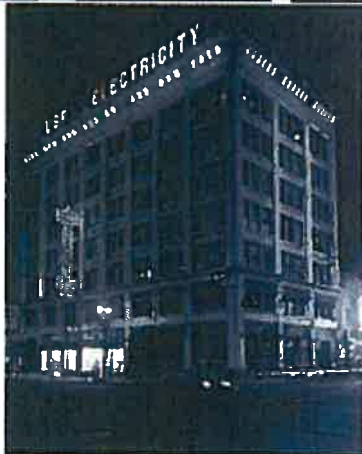
## Bright Skies Initiative

### 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

IT'S QUESTIONS  
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 13<sup>th</sup> day of June 2017.



**CITY OF EL PASO**

*[Signature]*  
Oscar Leeser, Mayor

*[Signature]*  
Richarda D. Momsen  
City Clerk

**APPROVED AS TO FORM:**

*[Signature]*  
Omar A. De La Rosa  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

*[Signature]*  
Cary S. Westin, Deputy City Manager  
Economic Development & Tourism

Date 07/10/2017  
A true and correct copy. I do hereby certify  
*[Signature]*  
City Clerk