RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement with DESIGNER'S MART to provide One (1) Four (4) cubic yard Containers for a service fee of $ 15.00 for each month for the purpose of collecting the company's recyclable materials in conjunction with the Department of Solid Waste Management's recycling program.

ADOPTED this 24th day of August 2004.

CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Ruth Reyes
Assistant City Attorney

98760

STATE OF TEXAS)
) **AGREEMENT**
COUNTY OF EL PASO)

THIS AGREEMENT, made and entered into this 24th day of August 2004, by the CITY OF EL PASO, hereinafter called the "City," and DESIGNER'S MART

WITNESSETH:

WHEREAS, recent changes in federal and state regulations pertaining to the operation of landfills receiving municipal solid waste for disposal have made it much more costly to operate such landfills, and

WHEREAS, diverting recyclable materials from landfills to recycling programs helps increase the life of existing landfills and generally is good for the environment, and

WHEREAS, the City only collects recyclable materials which it can sell,

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. The City agrees to lease DESIGNER'S MART One (3) Four (4) Cubic Yard Container (Equipment), to be placed by DESIGNER'S MART at its facilities. Nothing herein shall require the City to purchase additional containers to comply with the terms of this Agreement. DESIGNER'S MART agrees to pay a Service Fee of $ 15.00 per month for the Equipment.

2. The City agrees to collect all recyclable material deposited by DESIGNER'S MART'S employees. The City's collection schedule at DESIGNER'S MART'S facilities shall be as mutually agreed upon by the parties.

3. In consideration for the service provided herein, DESIGNER'S MART agrees to conduct a recycling program to encourage recycling at DESIGNER'S MART'S facilities and to donate recyclable materials to the City. As part of this recycling program, employees and others will be encouraged to recycle rather than throw recyclable materials into the City's landfill.

4. DESIGNER'S MART shall take steps necessary to ensure that only appropriate materials are deposited in the recycling container.

5. This Agreement shall commence upon execution and shall continue until terminated as provided herein.

6. All recyclable materials become the property of the City upon collection by the City. However, should the City Council of the City of El Paso find that the City of El Paso it must

discontinue the service provided herein, within ten (10) days after written notice to DESIGNER'S MART this Agreement shall be terminated with respect to the Equipment.

7. To the extent allowed by law, DESIGNER'S MART shall indemnify the City of El Paso against all loss or damage to their Equipment during this Agreement period.

8. DESIGNER'S MART agrees to indemnify, defend and hold harmless the City of El Paso, its officers, agents and employees from and against any and all loss, liability, damage, expense or claim of any nature whatsoever arising out of or incident to this Agreement, which are the result of acts of negligence of DESIGNER'S MART or DESIGNER'S MART'S agents or employees. DESIGNER'S MART shall give to the City reasonable notice of any such claims or actions. DESIGNER'S MART shall use legal counsel reasonably acceptable to the City in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

9. Upon termination of this Agreement, DESIGNER'S MART shall return Equipment in good condition to the City of El Paso and the Department of Solid Waste Management will arrange for pick up of the Equipment.

10. This Agreement may be terminated in whole or in part by either party upon thirty (30) days written notice to the other party at the following addresses:

CITY: City of El Paso
Attn: City Clerk
2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: Director
Department of Solid Waste Management
7969 San Paulo Drive
El Paso, Texas 79907

DESIGNER'S MART
6960 Gateway East Blvd.
El Paso, Texas 79915
Phone: (915) 778-9223

11. For purposes of determining the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.

12. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY OF EL PASO

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

DESIGNER'S MART

Name printed: Danny Perez
Title: Owner

APPROVED AS TO FORM:

Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth, P.E., Director
Department of Solid Waste Management