

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

**DEPARTMENT:** Museums and Cultural Affairs

**AGENDA DATE:** January 25, 2011

**CONTACT PERSON NAME AND PHONE NUMBER:** Sean McGlynn, MCAD Director, 541-4898

**DISTRICT(S) AFFECTED:** 8

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.**

Approve a Resolution authorizing the City Manager to enter into a contract with SPLENDID SUN PRODUCTIONS, LLC, a Texas Limited Liability Company ("CONTRACTOR") for a one-day "Neon Desert Downtown Music Festival" at the cost of \$20,000.00 (TWENTY THOUSAND AND NO/100 DOLLARS) and to authorize the City Manager to do a budget transfer to establish the funding for this agreement.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

The Neon Desert Downtown Music Festival will provide a high profile downtown event that is designed to drive local cultural tourism and is being facilitated in partnership with the El Paso Convention & Visitors Bureau.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

During LRC session on 11/04/10, Council asked MCAD to come back with a proposal on how TX vs. The Nation allocated HOT funds could be better used.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

\$20,000 HOT Funds

**BOARD / COMMISSION ACTION:**

**Enter appropriate comments or N/A**

N/A

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

**DEPARTMENT HEAD:**

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(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

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

**THAT** City Manager is authorized to sign a Contract by and between the CITY OF EL PASO and SPLENDID SUN PRODUCTIONS, LLC to plan, organize, produce and execute an outdoor music festival called NEON DESERT (the "*Festival*"), provide complete post event reporting to the CITY including the following: Gross Revenues, Expenses (including all amounts to support the operation, marketing and production of the Festival), Ticket Sales, Complimentary Tickets, Sponsorships, Ticket Drop Attendance, Lists of vendors, Contractors and Firms engaged in the Festival production, and any other reasonably requested reports, include the credit line on all publications, programs, press releases, season brochures, displays, advertising and every other mode of public communication regarding the Festival for payment in an amount no greater than, TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00), and to authorize the City Manager to do a budget transfer to establish the funding for this agreement.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF EL PASO

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

\_\_\_\_\_  
Deborah G. Hamlyn  
Deputy City Manager



employees, agents, representatives or sub-contractors who perform any service in connection with this Contract.

1.3 The CONTRACTOR shall not receive any compensation or benefits from the CITY, other than as expressly set forth in this Contract.

1.4 The CONTRACTOR understands and expressly agrees that, in all things relating to this Contract, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Contract as a governmental entity for the purpose of performing a governmental function.

1.5 The CONTRACTOR understands and expressly agrees that the CITY shall not be obligated or liable hereunder to any person other than CONTRACTOR.

## **2.0 Scope of Services**

2.1 The CONTRACTOR shall plan, organize, produce and execute an outdoor music festival as outlined in Exhibit "A" which is attached hereto and incorporated as if fully set forth herein by this reference (hereinafter referred to as the "Festival").

2.2 The CONTRACTOR shall provide complete post event reporting to the CITY including the following: Gross Revenues, Expenses (including all amounts to support the operation, marketing and production of the Festival), Ticket Sales, Complimentary Tickets, Sponsorships, Ticket Drop Attendance, Lists of vendors, contractors and firms engaged in the Festival production, and any other reasonably requested reports.

2.3 The CONTRACTOR shall include the credit line: **With the support of The City of El Paso** on all publications, programs, press releases, season brochures, displays, advertising and every other mode of public communication regarding the Festival.

2.4 CONTRACTOR agrees to require in its contract with performers that they refrain from obscene behavior, language, or lyrics, on or off the stage during the Festival, including during set-up and load-out time as defined by Texas State Law.

2.5 CONTRACTOR agrees to comply with all relevant applicable rules, regulations, ordinances and laws of the CITY, the State of Texas and the United States.

## **3.0 Consideration and Payment**

3.1 In consideration for such services, the CITY shall pay the CONTRACTOR, an amount no greater than, TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) in two payments as follows.

3.1.1 CITY will pay to CONTRACTOR the amount of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) upon receipt of an invoice from CONTRACTOR and upon the signing of this contract for costs incurred in planning the Festival.

3.1.2 CITY will pay to CONTRACTOR the amount of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00) upon receipt of an invoice from CONTRACTOR following the Festival for costs incurred in producing the Festival.

3.2 Payments shall be rendered in accordance with the CITY's purchasing policies and procedures.

#### **4.0 INSURANCE AND INDEMNIFICATION**

4.1 LIABILITY INSURANCE. CONTRACTOR shall provide liability insurance for personal injuries and death arising out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

4.1.1 CONTRACTOR shall purchase liability insurance for the term of this Agreement on behalf of the CITY or, alternatively, may name the CITY as an additional insured on the policy of general liability insurance referenced above. Any Certificate of Insurance should name the City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901, as an additional insured.

4.1.2 CONTRACTOR shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise out of this Agreement and will pay any final judgment of a court of competent jurisdiction against the CITY, its officers, agents, servants or employees and contractors, its officers, agents, servants or employees for actions or liability arising out the performance of this Agreement.

4.1.3 No Services shall be provided CONTRACTOR under this agreement until CONTRACTOR files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Term of this Agreement shall be grounds for cancellation of this Agreement.

**4.2 INDEMNIFICATION: CONTRACTOR UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF THE**

**CONTRACTOR, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS CONTRACT. CONTRACTOR FURTHER EXPRESSLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL ACTS, MALPRACTICE OR WILLFUL MISCONDUCT ON THE PART OF THE CITY, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS UNDER THIS CONTRACT.**

4.2.1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to CONTRACTOR every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

4.2.2 In addition, CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this Contract.

4.2.3 CONTRACTOR understands and agrees that it will (1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; (2) negotiate or cause to be negotiated the claim as the CONTRACTOR may deem expedient; and (3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

4.2.4 CONTRACTOR understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by CONTRACTOR pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by CONTRACTOR, and premiums on any appeal bonds.

4.2.5 The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving CONTRACTOR of any of its obligations under this paragraph.

## **5.0 General Provisions**

5.1 Breach of Contract. If the CONTRACTOR does not provide the services herein mentioned for reasons other than accidents, riots, strikes, epidemics, or acts of God, the CONTRACTOR shall be responsible to the CITY for any actual damages incurred by the CITY relating to this Contract, including but not limited to, promotional expenses.

5.2 Term and Termination. The term of this agreement shall be for a period of 1 year from the Effective Date, and CONTRACTOR shall provide all services in that time. It is further understood and agreed by the parties that any of the parties may terminate this Contract in whole or in part by mutual agreement at any time upon such terms as they agree to in writing. The City Manager of the City of El Paso is authorized to execute such writing on behalf of the City.

5.3 Use of Copyrighted Material. For the purpose of this Contract, the CONTRACTOR shall be held responsible for obtaining appropriate permission to use and incorporate copyrighted materials into the Festival. In addition, the **CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE CITY HARMLESS FROM ANY CLAIMS OR CAUSES OF ACTION THAT MIGHT ARISE FROM USE OF ANY MATERIAL.**

5.4 Security of CONTRACTOR's Property. CONTRACTOR is solely responsible for safeguarding and providing any security that CONTRACTOR deems necessary for its properties, costumes, instruments, equipment and any other personal property. CONTRACTOR acknowledges and expressly agrees that the CITY shall not be held liable for theft, loss, or damage to any of these items. CONTRACTOR further acknowledges and expressly agrees that CITY will not provide any insurance for the personal property of the CONTRACTOR or any performers or artists retained by the CONTRACTOR and the CITY is not responsible for any damage to such property regardless of the cause.

5.5 Damages. CONTRACTOR understands and agrees that it shall be responsible for any damage to any facilities or equipment caused by the CONTRACTOR or their employees, agents, representatives or persons retained by CONTRACTOR to perform. In the event of any such damage, the CONTRACTOR shall pay any and all costs or repairs or replacement for the damages to the facilities or equipment. The CITY will furnish the CONTRACTOR with a detailed written statement of any such damages and cost of repair, with normal wear and tear excepted, within thirty (30) days of the time of the damage.

5.6 Complete Agreement. This Contract, together with the Attachment(s) attached hereto, and agreements overseen by other CITY departments as relate to the Festival, to include but not be limited to permits to use City Parks and Recreation spaces, street closure permits, alcohol permits, and any other related agreement with the CITY, constitute the entire agreement between the parties relating to the terms and conditions of the Contract. The parties expressly acknowledge and warrant that, there exists no other written or oral understanding, agreements or assurances with respect to such matters except such other agreements as mentioned in this paragraph that are necessary for conducting the Festival and as are set forth herein. Unless expressly stated, this Contract confers no rights on any person(s) or business entity(s) that is not a party hereto. This Contract shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Contract.

5.7 Governing Law. This Contract 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 of El Paso.

5.8 Severability. All agreements and covenants contained in this Contract are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Contract should be valid and binding and have full force and effect as if the invalid portion had not been included.

5.9 Venue. For the purpose of determining place of this Contract and the law governing the same, this Contract is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

5.10 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: CITY of El Paso  
Attention: City Manager  
2 Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, TX 79901-1196

COPY TO: City of El Paso, Museums and Cultural Affairs Department  
Attention: Director  
Two Civic Center Plaza  
El Paso, TX 79901

CONTRACTOR: Splendid Sun Productions, LLC.  
Attn: Zach Paul  
1124 Hollow Creek Dr. Apt. #1  
Austin, TX 78704

5.11 Authority. The people signing this Contract on behalf of the parties warrant that he or she has the authority to do so and to bind the party for which he or she has authority to sign this Contract and all the terms and conditions contained herein.

5.12 Effectiveness. This Agreement shall be effective as of the date the last party signs, which shall be written on the first page and the signature page. All proposals, negotiations, notices and representations with reference to matters covered by this Agreement are merged in this instrument, and no amendment or modification thereof shall be valid unless evidence in writing is signed by both parties, for which the City Manager of the City of El Paso is authorized to sign provided such amendment or modification does not affect the annual budget of the City of El Paso.

**IN WITNESS WHEREOF**, the parties have executed this Contract on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

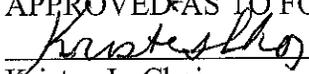
THE CITY OF EL PASO

SPLENDID SUN PRODUCTIONS, LLC.:

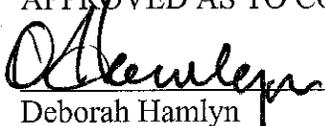
\_\_\_\_\_  
Joyce A. Wilson  
City Manager

\_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kristen L. Choi  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Deborah Hamlyn  
Deputy City Manager

## **Exhibit A**

CONTRACTOR will produce, market, and operate a one-day outdoor music festival in Downtown El Paso Texas with an approximate attendance of 10,000 people primarily featuring national touring bands, musical artists, and performers. ("Festival")

CONTRACTOR is responsible for obtaining all related permits and permissions and for paying any related costs and fees.

Festival will feature two main stages and two side stages with 20 or more acts performing.

Festival will be held on April 30, 2011 from 11am to 11pm.

CONTRACTOR will develop marketing campaign to include areas outside the Greater El Paso Region in order to promote travel and tourism to El Paso, Texas.

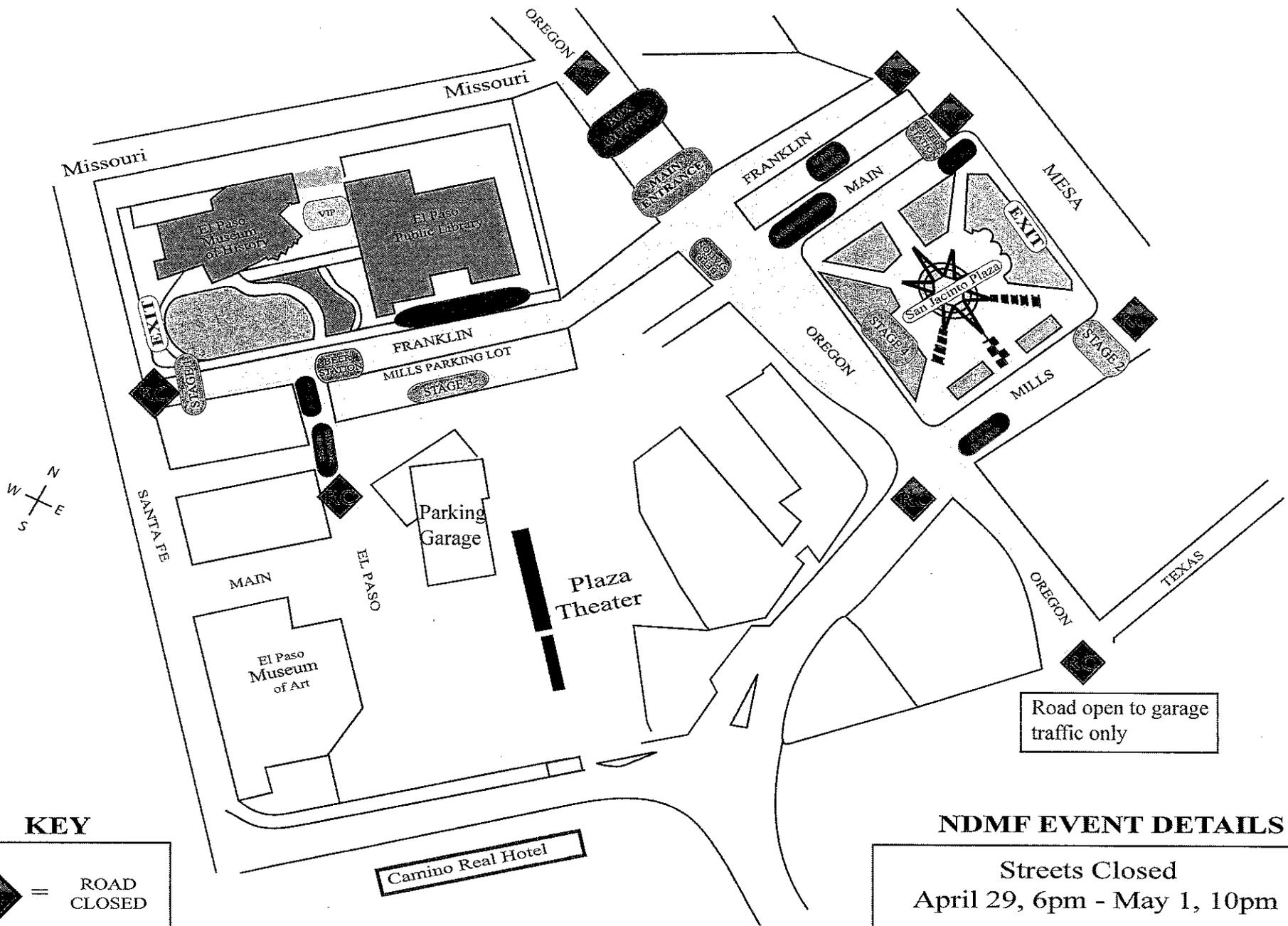
CONTRACTOR will seek to maximize utilization of El Paso based vendors, contractors, consultants, and other service providers when ever possible.

CONTRACTOR agrees that ticket prices for Festival will be as follows:

\$25 for the first 1,000 tickets sold

\$35 Pre Sale Tickets

\$45 Day of Tickets



**KEY**

-  = ROAD CLOSED
-  = EMERGENCY EXIT
-  = EVENT COVERAGE AREA

**NDMF EVENT DETAILS**

Streets Closed  
 April 29, 6pm - May 1, 10pm

April 29 - Set Up  
 April 30 - Event  
 May 1 - Breakdown

Road open to garage traffic only