

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

DEPARTMENT: City Manager's Office

AGENDA DATE: February 5, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Leila Melendez, City Manager's Office, 541-4859

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to execute a contract between the City of El Paso and the El Paso Marathon Foundation to provide for the public safety, street cleaning, and solid waste removal costs, in an amount not to exceed \$25,000 from the City's Hotel Occupancy Tax Fund for the 7th Annual El Paso Marathon, and that Council finds a public purpose in supporting the Marathon in light of the event's economic and health benefits to the City as well as the Marathon serving as a rallying point for community spirit and support.

BACKGROUND / DISCUSSION:

The City Council has previously provided in-kind sponsorship of this event for police and public safety services (traffic control) and solid waste removal. This year, hotel occupancy tax funds will be used to offset those costs through an internal budget transfer to the departments that provide the services, up to \$25,000. Any expenses that go above that amount will be billed to the event.

PRIOR COUNCIL ACTION:

Contract for 2012 event approved on November 8, 2011.

AMOUNT AND SOURCE OF FUNDING:

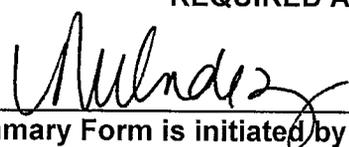
\$25,000 in-kind through hotel occupancy tax.

BOARD / COMMISSION ACTION

Not applicable

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


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

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, the City Council finds that participation by the City in the 7th Annual El Paso Marathon will provide direct benefits to the public in the form of public safety services; and

WHEREAS, the City Council finds that participation in the Event by the City constitutes an important public purpose, including the providing of economic and health benefits to the City, and it will serve as a rallying point for community spirit and support; and

WHEREAS, the Texas Tax Code § 351.101 authorizes use of the Hotel Occupancy Tax to promote tourism and the convention hotel and hotel industry, and the Parties believe that this cooperative agreement will provide a mutual benefit to both parties, those persons served by each party, and serve a governmental purpose of providing tourism and economic impact for the benefit of the taxpayers of both the City and the County by providing promotion of El Paso.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a contract between the City of El Paso and the El Paso Marathon Foundation to provide for the public safety, street cleaning, and solid waste removal costs, in an amount not to exceed \$25,000 from the City's Hotel Occupancy Tax Fund for the 7th Annual El Paso Marathon, and that Council finds a public purpose in supporting the Marathon in light of the event's economic and health benefits to the City as well as the Marathon serving as a rallying point for community spirit and support.

Dated this ____ day of February, 2013.

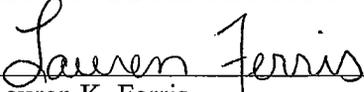
THE CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Lauren K. Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Director
City Development Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT

THIS CONTRACT is entered into by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "the City," and the **El Paso Marathon Foundation**, a Texas Nonprofit corporation, hereinafter referred to as "Contractor."

WHEREAS, Contractor has hired staff to produce **The El Paso Marathon**, hereinafter referred to as "Event," in the best possible manner; and

WHEREAS, a number of community businesses, organizations and individuals have agreed to support the Event due to its importance and significance to the community; and

WHEREAS, the City Council finds that participation by the City in the Event will provide direct benefits to the public in the form of public safety services; and

WHEREAS, the City Council finds that participation in the Event by the City constitutes an important public purpose, including the providing of economic and health benefits to the City, and it will serve as a rallying point for community spirit and support, and as such, the City is willing to provide the services set forth in this Contract.

WHEREAS, the Texas Tax Code § 351.101 authorizes use of the Hotel Occupancy Tax to promote tourism and the convention hotel and hotel industry, and the Parties believe that this cooperative agreement will provide a mutual benefit to both parties, those persons served by each party, and serve a governmental purpose of providing tourism and economic impact for the benefit of the taxpayers of both the City and the County by providing promotion of El Paso.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

- 1 TERM.** This Contract shall be valid from 7:00 am to 1:00 pm Sunday, February 24, 2013.

- 2 CONSIDERATION.**
 - 2.1 The Contractor agrees to provide the following services:**
 - 2.1.1 Manage and operate the Event on February 24, 2013, upon the route approved by the City through the Parade Permit No. LPAR12-00026, dated January 31, 2013, or as modified in writing by the parties.**
 - 2.1.2 Comply with all terms of the Permit No. LPAR12-00026, attached hereto as Exhibit "A" and incorporated by reference as if set forth in full.**
 - 2.1.3 Perform all street, sidewalk, and other right-of-way cleaning as required by Section 13.36.080 of the City Code and/or as provided in this Contract.**

- 2.2** In addition to the use of City rights-of-way, this Event requires the temporary closure of State-owned-and operated highway, thereby imposing additional obligations on the City pursuant to 43 Texas Administrative Code, Section 22.12. Contractor hereby agrees to indemnify and assume responsibility for the requirements imposed on the City under this statute in consideration of the City's submission on behalf of the Contractor, for approval of the closure and use of State Highway right-of-way. Accordingly, Contractor shall:
- 2.2.1** Assume all costs for the operations associated with the Event, to include, but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.
 - 2.2.2** Submit to the City, for submission to the State, for review and approval, the construction plans, if construction or modifications to the State's right-of-way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State for use of highways owned and operated by the State of Texas. The Contractor shall comply with all requirements of the State relating to a traffic control plan, which may include that a traffic control plan be signed, sealed, and dated by a registered professional engineer. Pursuant to State requirements, the traffic control plan shall be in accordance with the latest addition of the Texas Manual for Uniformed Traffic Control Devices (TMUTCD). All temporary traffic control devices used on state highway right-of-way must be included in the State's Compliant Work Zone Traffic Control Devices List. Should the State require changes to the traffic control plan and if it is found to be inadequate, Contractor will provide the City with the necessary information to bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the Event.
 - 2.2.3** Ensure the appropriate Law Enforcement agency has reviewed the traffic control plan for the closures and that the agency has deemed them to be adequate. If the Law Enforcement Agency fails to approve the traffic control plan, Contractor shall notify the City so that the appropriate Law Enforcement Agency can contact the State for Consultation no less than ten (10) working days prior to the Event.
 - 2.2.4** Complete all revisions to the traffic control plan as requested by the State within the required timeframe. Contractor hereby agrees that any failure to comply with the traffic control plan may constitute reckless endangerment of the public and the Texas Department of Public Safety (DPS) may be notified of the situation and may take any appropriate action including cancelling of the event, and failing to follow the traffic control plan or State instructions may result in a denial of future use of right-of-way for three years.
 - 2.2.5** Comply with the traffic control plan with regards to any closure, but in no event will Contractor initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed from the highway reopened to traffic within 24 hours after the completion of the Event.

- 2.2.6** Prepare a traffic enforcement plan, which must be finally approved by the State. The plan must ensure that adequate enforcement personnel are utilized to prevent vehicles from stopping and parking along the main lanes of state highway right-of-way and otherwise prevent vehicles from stopping and parking along the main lane of traffic by both vehicles and pedestrians. The plan must be reviewed by the Law Enforcement Agency that will be providing traffic control for the Event, and Contractor must obtain from the Law Enforcement Agency a letter certifying they agree with the traffic enforcement plan and will be able to meet the requirements. Such plan and letter of certification must be submitted to the City with sufficient time for review and submission to the State, but no later than 96 hours before the Event. The State requires submission and written approval of the plan no later than 48 hours before the Event.
- 2.2.7** Assure the State, through the City, that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the traffic control plan.
- 2.2.8** Avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right-of-way and restore or repair the State's right-of-way, including but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.
- 2.2.9** This Contract may be terminated and the Event cancelled by the City if Contractor fails to comply with any of the requirements set forth in Section 2.2, *et seq.* of this Contract.
- 2.3** In exchange for Contractor's services, the City agrees to provide a financial contribution in an amount up to TWENTY- FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) from its Hotel Occupancy Tax Fund to cover public safety, street cleaning, and solid waste removal costs. City shall send an invoice to the Contractor for any public safety, street cleaning and solid waste removal services performed by the City in excess of \$25,000.00 and Contractor shall pay such amount within thirty (30) days of its receipt of the invoice.
- 2.3.1** This assistance shall be as necessary as determined by the City in accordance with Section 13.36 of the City Code.
- 2.3.2** The stand-by assistance from City Fire Department personnel and Emergency Medical Service personnel shall be as determined to be appropriate by the City. Such personnel may inspect equipment involved in the Event and perform any other assignments as may be determined solely by the City to be appropriate. However, nothing in this agreement shall create any additional legal duties or responsibilities other than those general duties to provide police, fire or emergency medical protection or assistance which may or may not already exist for the general public, and the City and its employees cannot and do not guarantee or otherwise provide

any assurances as to the adequacy of or safety regarding any equipment which the City's employees may inspect.

3 IN-KIND ASSISTANCE AND PAYMENT OF CERTAIN FEES.

- 3.1** Contractor shall obtain the permit for the Event as set forth in Section 13.36 of the City Code, at Contractor's cost.
- 3.2** Contractor shall pay the amount invoiced by the City within thirty (30) days of receipt of such invoice.
- 3.3** The City shall pay the public safety, street cleaning, and solid waste removal costs for the Event in an amount up to the dollar amount entered in paragraph 2.3 of this Contract within thirty (30) days of processing of such costs.
- 3.4** Contractor shall provide recognition of the City's funding for the Event by including the City logo in the Event and/or advertisements of the Event, as possible, with the City's prior approval of such display.

4 LEGAL RELATIONSHIP. Nothing in this Agreement shall be construed as creating a legal relationship of co-sponsorship or responsibility for the promotion, conducting, or operation of the Event on the part of the City. Contractor is an independent contractor, and nothing herein shall be construed as creating the relationship of employer and employee or principal and agent between the parties. The City's waiver of any or all fees for necessary police traffic-control assistance, to the extent such assistance is provided, shall not be construed as the City's co-sponsorship of the Event nor as support of or opposition to any issue.

- 4.1** City shall not be liable for any and all demands, claims, damages, causes of action, costs or losses for personal injury, property damage, or death caused by or arising out of the negligence of Contractor while Contractor is promoting, conducting, or operating the Event, or which are caused by or arise from the failure of Contractor to abide by appropriate laws, rules and regulations.

5 EQUIPMENT. All equipment used by the Contractor or which is permitted to be used in the Event by the Contractor shall be maintained in satisfactory working condition. The Contractor shall not intentionally or knowingly use any equipment in any manner that may cause injury to the property of the City or third parties or any persons.

6 SAFETY. Contractor shall comply with all applicable laws, ordinances, and regulations and shall encourage its participants in the Event to comply with all applicable laws, ordinances, and regulations. Contractor shall exercise every precaution for the safety of public and private property and persons.

7 INSURANCE AND INDEMNIFICATION PROVISIONS. The Contractor acknowledges that its request to use the public right of way is solely for its benefit and not a use that benefits the City taxpayers as a whole. As a result, the Contractor agrees to provide the following as a condition of its use of the public right of way:

7.1 **LIABILITY INSURANCE.** The Contractor shall obtain and provide a general liability insurance policy with a minimum One Million Dollars (\$1,000,000.00) limit, per occurrence, for personal injury, death and property damage, with a minimum One Million Dollars (\$1,000,000.00) general aggregate limit. These amounts are not a limitation upon the Contractor's agreement to indemnify and hold harmless the City.

7.1.1 Because the granting of this Contract is solely for the benefit of the Contractor and recognizing that the City taxpayers should not incur any costs associated with the Contractor's enjoyment of this Contract, except as provided herein, the Contractor is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees, or independent contractors, alleged or asserted by any individual, in connection with the performance of this agreement.

7.1.2 The 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 and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and the Contractor, its officers, agents, servants, or employees.

7.1.3 This Contract shall not be executed by the City until the Contractor files a copy of the policy or certificate of liability insurance as herein set forth with the Department of Transportation. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City, or without ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the contract shall be grounds for cancellation of the Parade Permit and City Sponsorship. Certificates of Insurance that state the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

7.2 **INDEMNITY.** As a condition of the granting of this Contract, the Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD HARMLESS the City, its officers, agents and employees, FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. 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 the Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Contractor 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. The Contractor will pay all judgments in actions defended by the 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 the Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

- 8 **DISCRIMINATION.** Contractor, its officers, agents, servants, employees, volunteers, and third parties will not discriminate on account of race, color, religion, sex, or national origin, permit or allow any discrimination in the work done pursuant to this Contract in violation of the law.
- 9 **ACCESSIBILITY STANDARDS FOR DISABLED PERSONS.** The Contractor agrees that in the performance of this Contract, it will comply with the Americans with Disabilities Act ("ADA"). The Contractor must file any Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.
- 10 **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable federal, state and local laws and regulations. Failure to do so in any manner that materially impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder shall constitute a material breach of this Contract.
- 11 **TERMINATION.**
- 11.1 Termination by Mutual Consent. The parties may terminate this Contract by mutual consent upon such terms as they may agree in writing.
- 11.2 Termination by Any Party. It is further understood and agreed by the parties that any party to this Contract may terminate this Contract, in whole or in part, upon **thirty (30) days** written notice if any of the other parties fails to perform any of its material obligations hereunder and fails to completely cure the breach.
- 11.3 Time of Performance Termination – Force Majeure. No party to this Contract will be liable for failure to comply with any term of this Contract when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this Contract unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other parties in writing.
- 11.4 Termination Shall Not Be Construed as Release. Termination by any party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party(s). Further, the terminated party(s) shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Contract.

11.5 Upon termination of this Contract, except as otherwise provided herein, all duties and obligations of the parties to this Contract shall cease.

12 **AMENDMENTS AND WAIVER.** The parties may amend this Contract at any time by mutual consent. Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City and the Contractor. No claim or right arising out of a breach of this Contractor can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

13 **COMPLETE AGREEMENT.** This Contract constitutes 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 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.

14 **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(s) and/or any ordinance of the City.

15 **SEVERABILITY.** Every provision of this Contract is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

16 **NOTICES.** All notices and communications under this Contract shall be either hand-delivered or mailed, certified, postage prepaid in the United States Postal Services, return receipt requested, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: City Manager
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

WITH COPY TO: Department of Transportation
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

CONTRACTOR: El Paso Marathon Foundation
Attn: Mike Coulter
P.O. BOX 2443
El Paso, TX 79952

17 **ASSIGNABILITY.** This Contract, its rights, duties and responsibilities may not be assigned by any of the parties without the prior written consent of the City Council.

- 18** **WARRANTY OF CAPACITY TO EXECUTE CONTRACT.** The people signing this Contract on behalf of the parties warrants that he/she has the authority to do so and to bind the party for which he/she has authority to sign this Contract and all the terms and conditions contained herein.
- 19** Each person signing below represents that he or she has read this Contract in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.
- 20** **EFFECTIVE DATE.** This Contract is effective as of the last date of entered below.

(Signatures begin on following page)

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

Date: _____

APPROVED AS TO FORM:

Lauren Ferris
Lauren Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

MSM
Mathew S. McElroy, Director
City Development Department

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 31st day of January, 2013.

CONTRACTOR:

AKC

Name Printed: Mike Coulter

Title: RACE DIRECTOR

Date: 1-31-13

Exhibit A



City of El Paso

Department of Transportation

Parade Permit

El Paso

Owner/Applicant

EL PASO MARATHON
PO BOX 2443
EL PASO, TX 79952

The applicant shall carry the permit during the event.

Event: El Paso Marathon

Permit No: LPAR12-00026

Site: EL PASO, TX
Address:

Issued: 1/31/2013

Expires: 2/24/2013

Location: FULL ROUTE: Start at picnic area closest to the top of Transmountain, head east on Transmountain to Gateway South and turn right, left on Diana, left on Kenworthy, right on Fairbanks, left on McCombs, slight right onto Pheasant, right on Deer, right on Chaffee, head to Chaffee Gate to enter Fort Bliss, slight left then left onto Carrington, right on Hahn, left on Sheridan, right to Pershing Gate, exit Fort Bliss at Pershing Gate then left on Radford, right on Yandell, left on Stevens, right on Wyoming, right on Brown, left on Montana, left on Oregon, right on San Antonio, left on El Paso, right on San Antonio, right on Anthony, to finish line.
HALF MARATHON: Start in front of Anthony Park on Anthony, take Anthony to San Antonio and turn left, left on El Paso, right on San Antonio, slight left to Magoffin, left on Brown, left on Myrtle, right on Campbell, right on Wyoming, left on Stevens, right on Yandell, left on Radford, right on Altura, left on Caples, left on Hibbert, left on Leeds, right on Belmont, left on Memphis, left on Radford, right on Yandell, left on Stevens, right on Wyoming, right on Brown, left on Montana, left on Oregon, right on San Antonio, left on El Paso, right on San Antonio and finish on Anthony.
5K: Start at corner of Anthony & Western, head south to Antonio and turn left, left on El Paso, right on San Antonio, veer left to Magoffin, left on Brown, left on Myrtle, right on Campbell, left on Missouri, left on Oregon, left on San Antonio, left on El Paso, right on San Antonio and to Anthony to finish line at Western & San Antonio.

Police:	Start Time: 07:00	End Time: 13:00
	Control Time From: 07:00	Control Time To: 13:00

Date of Event:	02/24/2013	Start Time:	07:00	End Time:	13:00
Type of Event:	Foot Race/Walk	No. of Spectators:	400	No. of Participants:	3000
No. of Animals:		Others:			

No. of Microphones:	No. of Speakers:	No. of Amplifiers:	Device:
Capacity:	Capacity:	Capacity:	No. of Devices:

Comments:

- The permittee shall comply with all permit directions and conditions and with all applicable laws and ordinances.
- The permittee shall not allow the parade to begin, proceed or continue until such time as the applicable traffic control plan or method is set up and functioning.
- The permittee shall not make an exclusive use of any City Controller park or park facility for a demonstration except in compliance with Section 13.24.200 of this code.
- The permittee shall take all steps necessary to keep the area for the public assembly clean or the parade route clean and free of animal excrement during the parade.
- The permittee shall, immediately upon the conclusion of the event, clean and remove all litter and debris left on the roadways, sidewalks, and other public right-of-ways by participants, animals, floats and vehicles used in the event and by spectators to the event.
- The permittee may, no later than fourteen business days prior to the day of the event, request the assistance of the City with such cleaning and if provided the permittee shall be responsible for his costs of the City cleaning. Such request shall be made on a form provided by the City and filed with the permit official. In the event that the permittee does not request and receive the assistance of the City with such cleaning and the permittee fails to clean and remove all such litter and debris within four hours of the end of the event, the City may perform such cleaning and the permittee shall be responsible for payment of city cleaning costs within 10 days of receipt of the bill from the City Comptroller.
- Payment of all costs of providing On-Duty Law Enforcement officers and any other traffic control costs, less the amount of deposit made under Section 13.36.050 C of this code, shall be due and payable within ten days of receipt of the bill from the City Comptroller.

[Signature]
Issued By

MAILED
Applicants Signature

1-31-13

Mailing Address: EL PASO MARATHON
PO BOX 2443
EL PASO, TX 79952

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF EL PASO §

AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of El Paso, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

WITNESSETH

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Transmountain Road (Loop 375), US 54, Gateway Boulevard South and McCombs Street (FM2529) in El Paso County, Texas; and

WHEREAS, the local government has requested the temporary closure of Texas Avenue (SH 20), for the purpose of The 2013 El Paso Marathon, from 7:00 am to 1:00 pm Sunday, February 24, 2013 as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

WHEREAS, the Event will be located within the local government's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

WHEREAS, on the 5th day of February, 2013, the El Paso City Council passed a Resolution, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

A. The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

B. The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.

C. The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

D. The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

E. The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

F. The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local

government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

G. The local government hereby assures the State that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

H. The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 5. TERMINATION

A. This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period that the local government and/or its contractors are encroaching upon the State right of way.

B. In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

Article 9. AMENDMENTS

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

Article 10. COMPLIANCE WITH LAWS

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Local Government:	State:
City of El Paso City Manager Attn: Joyce Wilson P.O. Box 1890 El Paso, Texas 79950-1890	Texas Department of Transportation Attn: Robert Bielek, P.E. El Paso District Engineer 13301 Gateway West El Paso, Texas 79928-5410

Agreement No. _____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF EL PASO

Executed on behalf of the local government by:

_____ Date _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

Lauren Ferris
Lauren K. Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy
Mathew S. McElroy, Director
City Development Department

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
Robert Bielek, P.E.,
El Paso District Engineer

Agreement No. _____

Exhibit A
2013 El Paso Marathon

Event Description:

A temporary street closure of the following streets for less than 24 hours:

Exhibit B
City Council Resolution

2012 El Paso Marathon

Full route

Runners start at the picnic area closest to the top of TransMountain Road.

- East on TransMountain to U.S. 54, right on Gateway South
- Gateway South to Diana, left
- Diana to Kenworthy, left
- Kenworthy to Fairbanks, right
- Fairbanks to McCombs, left
- Slight right onto Pheasant
- Pheasant to Deer, right
- Deer to Chaffee, right
- Chaffee to Chaffee gate to enter Fort Bliss slight left then left onto Carrington
- Carrington to Hahn, right
- Hahn to Sheridan, left
- Sheridan to Pershing Gate, right
- Exit Fort Bliss at Pershing Gate then left on Radford
- Radford to Yandell, right
- Yandell to Stevens, left
- Stevens to Wyoming, right
- Wyoming to Brown, right
- Brown to Montana, left
- Montana to Oregon, left
- Oregon to San Antonio, right
- San Antonio to El Paso, left
- El Paso to San Antonio, right
- San Antonio to Anthony, right to finish line

El Paso Marathon
Sunday, February 5, 2012

Half Marathon Route

Start in front of Anthony Park on Anthony St.

- Anthony to San Antonio, turn left
- San Antonio to El Paso, turn left
- El Paso to San Antonio, turn right
- San Antonio to Magoffin, slight left onto Magoffin
- Magoffin to Brown, turn left
- Brown to Myrtle, turn left
- Myrtle to Campbell, turn right
- Campbell to Wyoming, turn right
- Wyoming to Stevens, turn left
- Stevens to Yandell, turn right
- Yandell to Radford, turn left
- Radford to Altura, turn right
- Altura to Caples, turn left
- Caples to Hibbert, turn left
- Hibbert to Leeds, turn left
- Leeds to Belmont, turn right
- Belmont to Memphis, turn left
- Nashville to Radford, turn left
- Radford to Yandell, turn right
- Yandell to Stevens, turn left
- Stevens to Wyoming, turn right
- Wyoming to Brown, turn right
- Brown to Montana, turn left
- Montana to Oregon, turn left
- Oregon to San Antonio, turn right
- San Antonio to El Paso, turn left
- El Paso to San Antonio, turn right
- San Antonio to finish on Anthony St.

EXHIBIT "A"

PG. 2 OF 3

5K route

El Paso Marathon

Sunday, February 5, 2012

7 a.m. start time

Start at corner of Anthony and Western St.

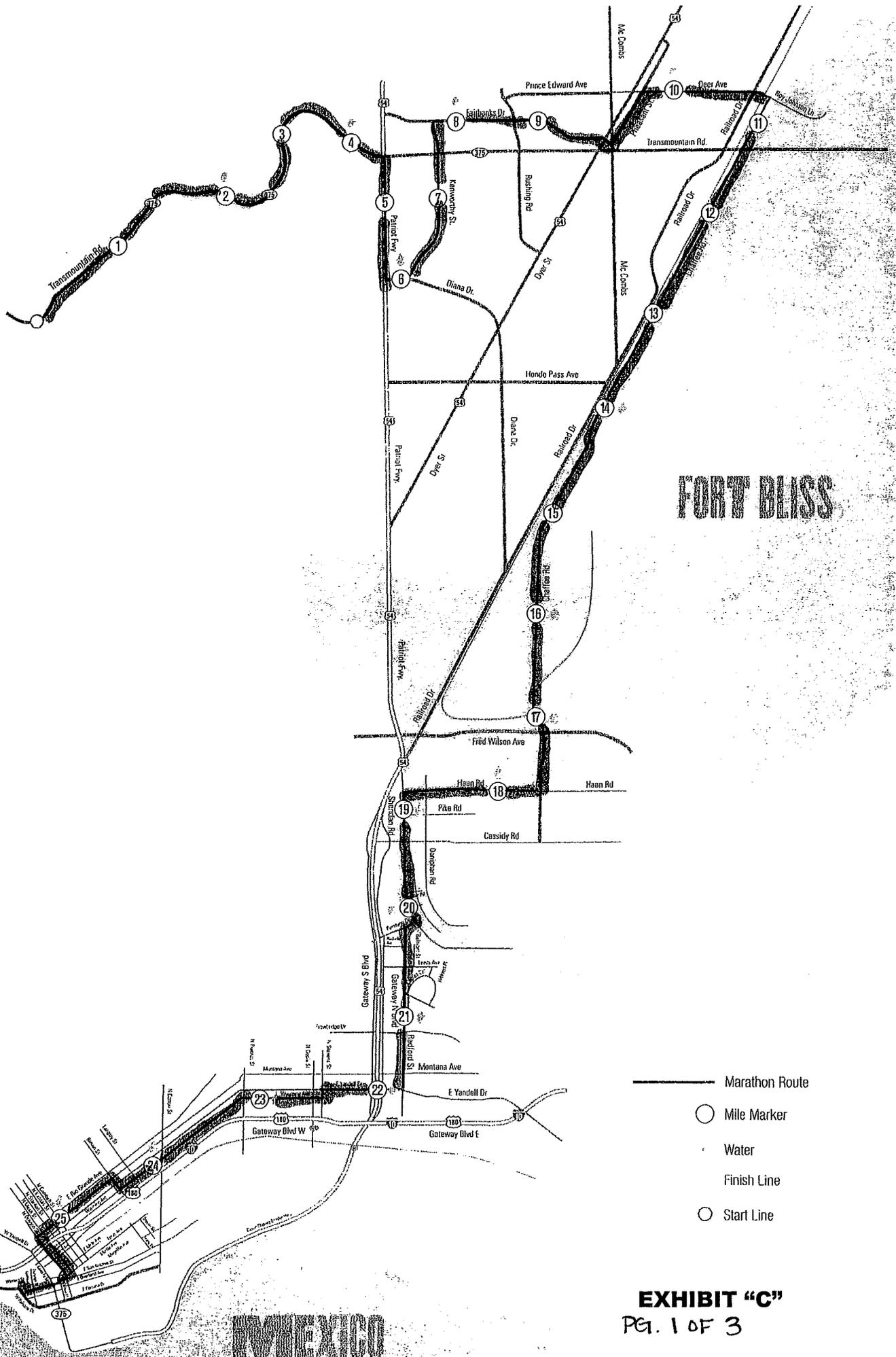
- South to San Antonio, turn left
- San Antonio to El Paso, turn left
- El Paso to San Antonio, turn right
- San Antonio to Magoffin, veer left
- Magoffin to Brown, turn left
- Brown to Myrtle, turn left
- Myrtle to Campbell, turn right
- Campbell to E. Missouri, turn left
- E. Missouri to Oregon, turn left
- Oregon to San Antonio, turn left
- San Antonio to El Paso, turn left
- El Paso to San Antonio, turn right
- San Antonio to Anthony, turn right to finish line at Western and San Antonio

EXHIBIT "A"

PG. 3 OF 3

Agreement No. _____

**Exhibit C
Location Map**



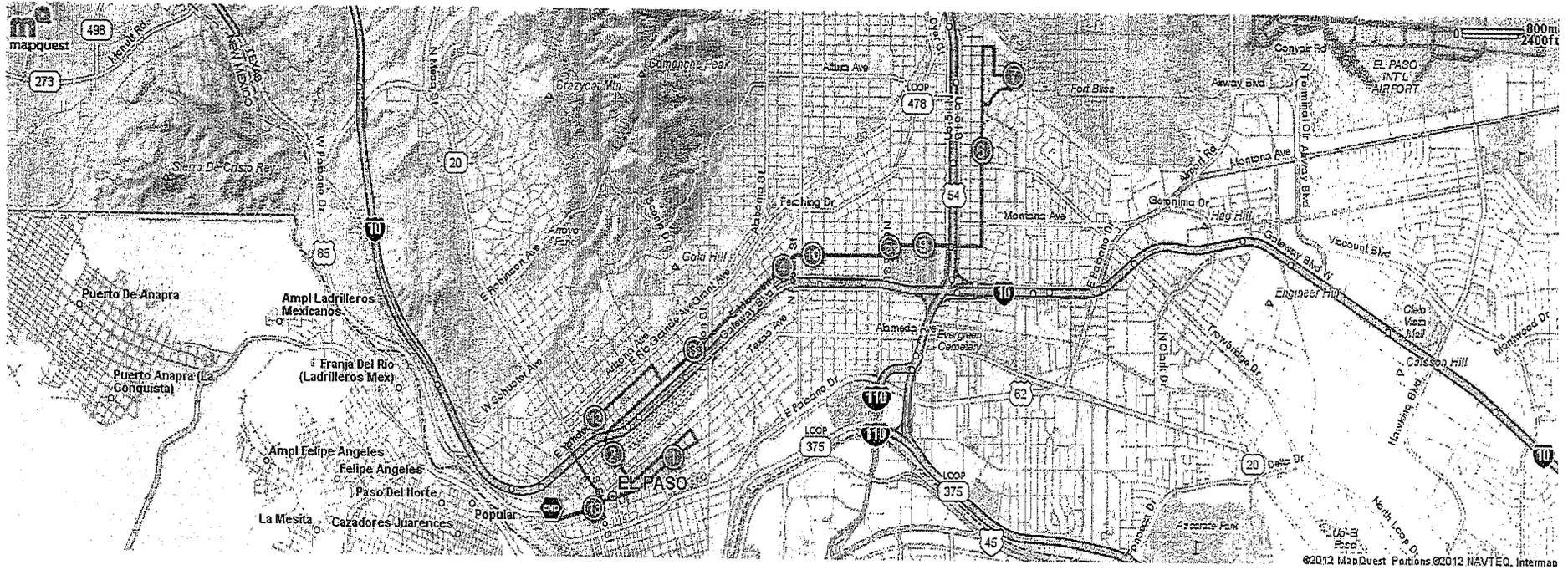
FORT BLISS

- Marathon Route
- Mile Marker
- Water
- Finish Line
- Start Line

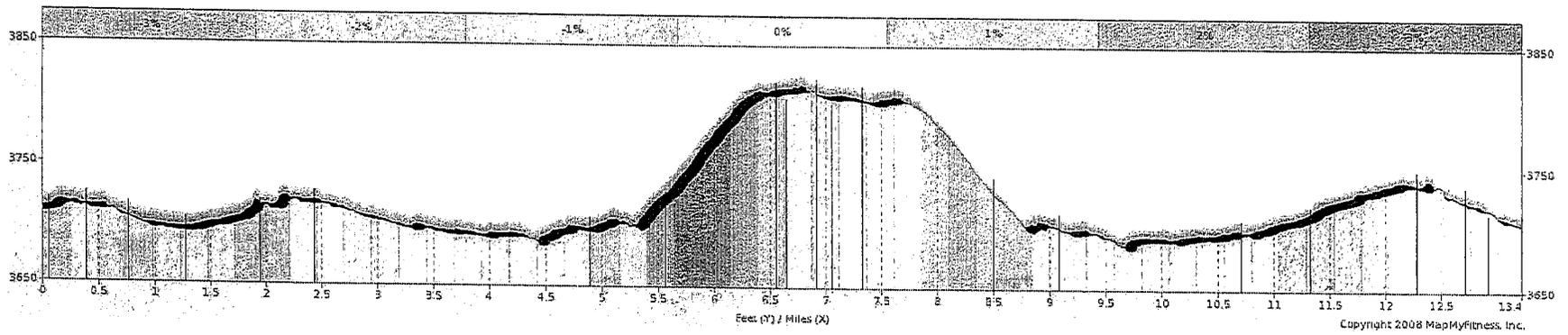
EXHIBIT "C"
 Pg. 1 of 3

MEXICO

El Paso Marathon 2013
 Half Marathon map



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El Paso Marathon 2013

5K Route

