

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

CITY CLERK DEPT.  
2013 FEB -5 PM 5:56

DEPARTMENT: City Development

AGENDA DATE: Consent, February 11, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Mirian Spencer, (915) 541-4056, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: Districts 1, 2, 4 & 8

**SUBJECT:**

A Resolution that the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas for the temporary closure and use of State owned Transmountain Road, US 54, Gateway Boulevard South, and McCombs Street during The 2013 El Paso Marathon on February 24, 2013, an event scheduled to exceed four hours in length and found by the City to serve a public purpose (LPA12-00026) Districts 1, 2, 4, and 8.

**BACKGROUND / DISCUSSION:**

The 2013 El Paso Marathon has requested permission to utilize portions of Kenworthy Drive adjacent to Transmountain Road (Loop 375), US 54, Gateway Boulevard South and McCombs Street from 7:00 am to 1:30 pm on February 24, 2013. The closures will be for a period of time exceeding four hours, as such TxDOT requires the Agreement for the Temporary Closure of State Right-of-Way (Form TEA 30A) to be completed by the City of El Paso.

**PRIOR COUNCIL ACTION:**

A resolution declaring the event to have a public purpose and contribute funds from the Hotel Occupancy Tax was approved on February 5, 2013.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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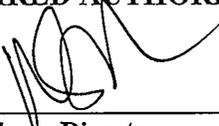
**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
Mathew S. McElroy, Director  
City Development

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**WHEREAS**, the El Paso Marathon Foundation is hosting The 2013 El Paso Marathon from 7:00 am to 1:00 pm Sunday, February 24, 2013 (hereinafter referred to as the “Event”); and

**WHEREAS**, The Event will utilize both City and State rights-of-way; and

**WHEREAS**, The City of El Paso (hereinafter referred to as the “City”) has found the Event serves a public purpose; and

**WHEREAS**, The City has permission to utilize portions of City rights-of-way for the Event; and

**WHEREAS**, The State of Texas (hereinafter referred to as the “State”) owns and operates a system of highways for public use and benefit within El Paso, Texas; and

**WHEREAS**, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of portions of the State Highway System for periods of time exceeding four hours; and

**WHEREAS**, The State in recognition of the public purpose for the Events wishes to cooperate with the City, provided the closure is in accordance with the requirements of 43 TAC, Section 22.12;

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

That the City Manager be authorized to sign an Agreement For The Temporary Closure of State Right Of Way (Form TEA 30A) by and between the City of El Paso and the State of Texas for the temporary closure and use of State owned Transmountain Road, US 54, Gateway Boulevard South, and McCombs Street during The 2013 El Paso Marathon on February 24, 2013, an event scheduled to exceed four hours in length and found by the City to serve a public purpose.

**ADOPTED** this \_\_\_\_\_ day of February, 2013.

**THE CITY OF EL PASO**

ATTEST:

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

\_\_\_\_\_  
Richarda Duffy Momsen,  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Lauren K. Ferris  
Assistant City Attorney

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

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 5<sup>th</sup> 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:

<b>Local Government:</b>	<b>State:</b>
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:**

MSM  
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**

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

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

2012 El Paso Marathon

Full route

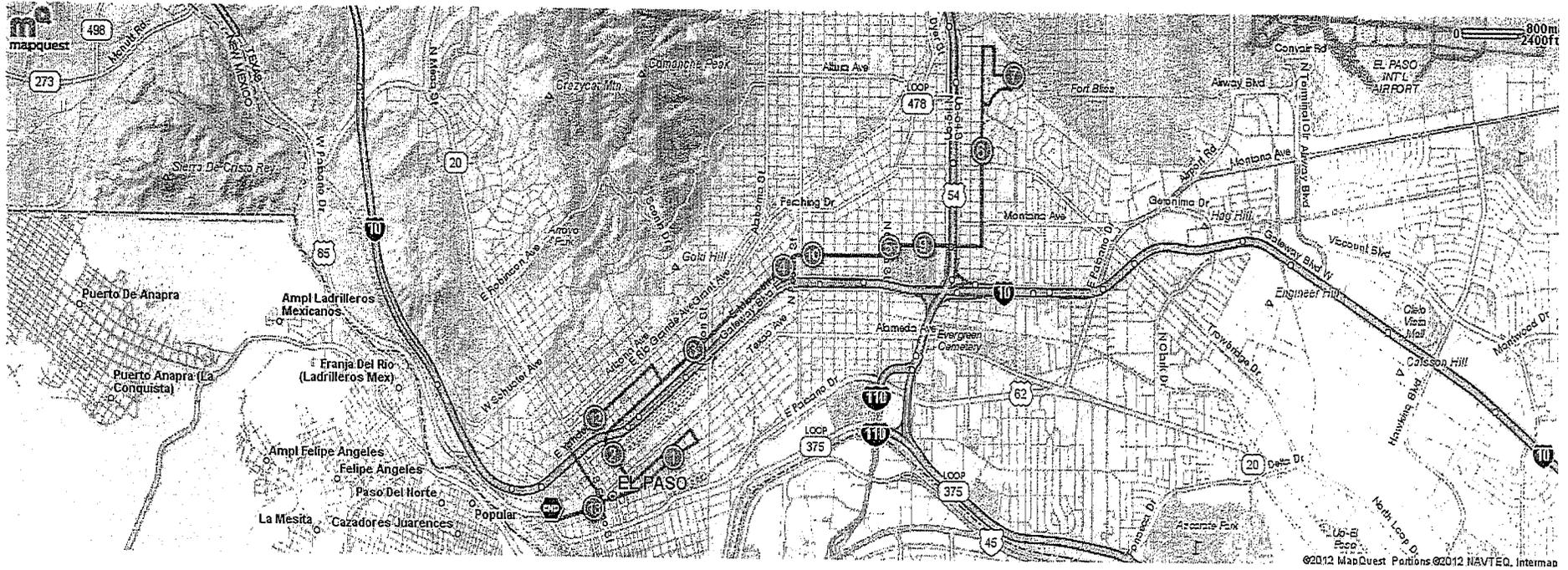
Runners start at the picnic area closest to the top of TransMountain Road.

- 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

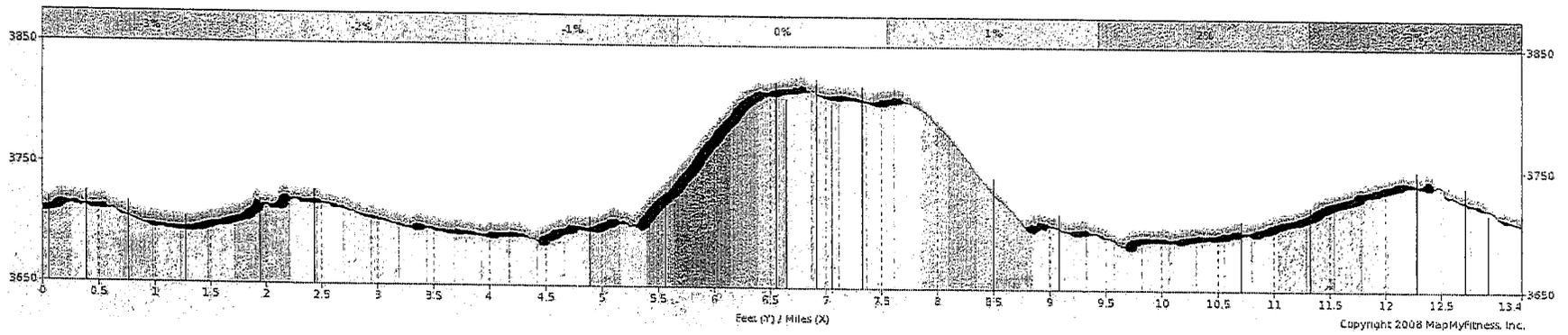
Agreement No. \_\_\_\_\_

**Exhibit C  
Location Map**

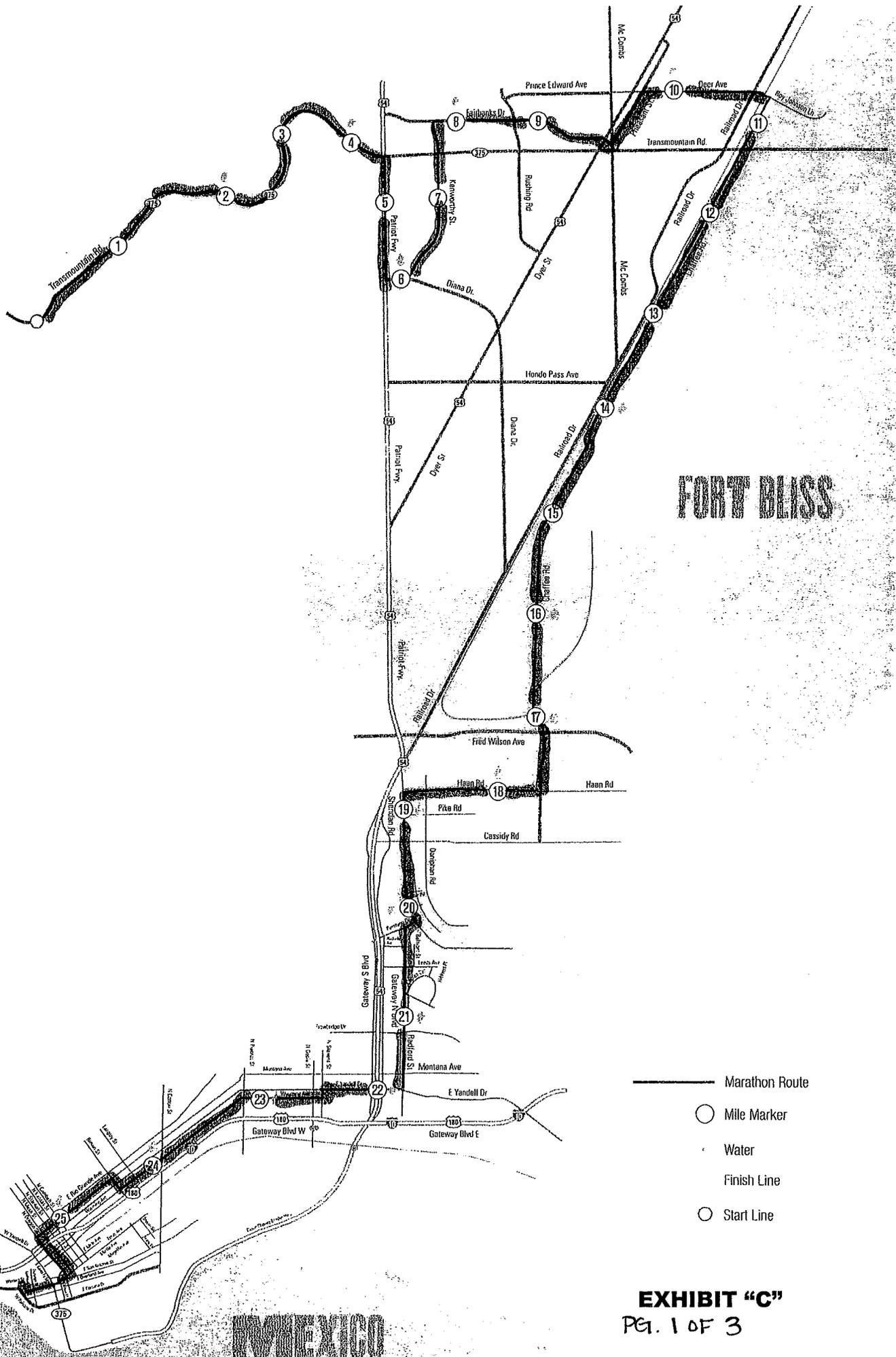
El Paso Marathon 2013  
Half Marathon map



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# FORT BLISS

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

**EXHIBIT "C"**  
 Pg. 1 of 3

MEXICO