

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

DEPARTMENT: Museums and Cultural Affairs

AGENDA DATE: February 16, 2009

CONTACT PERSON/PHONE: Sean McGlynn 541-4896

DISTRICT(S) AFFECTED: 8

SUBJECT:

A Resolution that the City Manager be authorized to sign an Agreement by and between the City of El Paso and The United States Department of Interior, National Park Service, for the terms and conditions of the use of the Chamizal National Memorial by the City of El Paso during the Music Under the Stars events.

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?

After 25 successful years of collaborating on the Music Under the Stars World Music Festival, the City of El Paso Museums and Cultural Affairs Department (MCAD) and the National Park Service/Chamizal National Memorial (NPS) will formalize a partnership program that serves over 100,000 visitors to and citizens of El Paso, Texas. What a formalized partnership means for the City of El Paso (COEP):

1. Enables greater corporate fundraising flexibility to offset COEP program costs, currently \$125,000/season
2. Ceases annual permitting fees, eliminating a \$14,000 program expenses
3. Allows for NPS to maximize their resources, including long-term program budget forecasting to potentially offset COEP costs
4. Enables MCAD and NPS to jointly market the event regionally and nationally

PRIOR COUNCIL ACTION

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

N/A

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?

\$125,000 funded through HOT Funds 15707/55010303/55000 502102-Artistic Performance Services

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

THAT the City Manager be authorized to sign an Agreement by and between the City of El Paso and The United States Department of the Interior, National Park Service, for the terms and conditions of the use of the Chamizal National Memorial by the City of El Paso during the Music Under the Stars events.

ADOPTED this ___ day of _____, 2009.

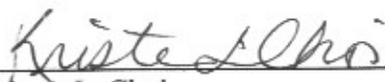
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Kristen L. Choi
Assistant City Attorney

APPROVED AS TO CONTENT:



Sean P. McGlynn, Director
Museums and Cultural Affairs Department

**AGREEMENT
for
Music Under The Stars**

Agreement Number G7210-09-001

**Agreement between
The United States Department of the Interior
National Park Service
and
City of El Paso**

This Agreement is entered into by and between the National Park Service (hereinafter "NPS"), United States Department of the Interior, acting through the Superintendent of Chamizal National Memorial (hereinafter "Park"), and the City of El Paso, (hereinafter "City").

ARTICLE I – BACKGROUND AND OBJECTIVES

The objective of this Agreement is to establish the terms and conditions under which the parties will provide mutual assistance in the Music Under the Stars (hereinafter "MUTS") event that is held at the Park on a yearly basis. The Park commemorates the diplomatic resolution of the longstanding Chamizal boundary dispute between the United States and Mexico. It also fosters goodwill and understanding between the people of the United States and Mexico and provides a center to present activities that celebrate cultural exchange. The NPS and the City, through the Museums and Cultural Affairs Department (hereinafter "MCAD"), have collaborated for 25 years to present MUTS to the people of El Paso. The formalization of this collaboration in the form of this Agreement will ensure the continued success of one of the region's premier cultural programs.

ARTICLE II - AUTHORITY

This Agreement is entered into under the authority of *16 U.S.C. §1b(5)*. This authority allows for furnishing, on a reimbursement of appropriation basis, supplies, and the rental of equipment to persons and agencies that in cooperation with, and subject to the approval of, the Secretary of the Interior, render services or perform functions that facilitate or supplement the activities of the Department of the Interior in the administration of the national park system; provided, that reimbursements hereunder may be credited to the appropriation current at the time reimbursements are received. The City will reimburse NPS as outlined in Article III section B (11).

ARTICLE III – STATEMENT OF WORK

A. The NPS agrees to:

1. Coordinate the presence of EMS as they interface with the onsite NPS Law Enforcement.
2. Provide onsite NPS law enforcement to ensure park guests adhere to park rules, resolve altercations and coordinate lost child procedures.
3. Manage all food vendors.
4. Manage all education components of the program regarding the Chamizal (“Interpretive Program”).
5. Handle all equipment operations including soundboard, microphones and amplification system unless outside equipment is brought in for specific concerts.
6. Coordinate extra security if needed.
7. In the case of severe weather or any other threat to public safety, start the concert early (anytime after the sound check and consulting with the Superintendent’s representative), temporarily postpone or delay (up to forty-five minutes, but with no extension on 9:30 pm end time), cancel the intermission break, or completely cancel the concert. (Severe weather includes, but is not limited to high winds, heavy rain, and lightning.)
8. NPS will receive cost recovery payments from MCAD to cover additional overtime, additional staff, and/or holiday pay as necessary per event as outlined in section B. 11 below. The Park will send an itemized Bill of Collection to MCAD for such costs to be paid.

B. The City of El Paso agrees to:

1. Coordinate artist contracts, schedules, transportation, hospitality and on site care.
2. Coordinate all rentals for concerts including: Port-a-lets, backline, solid waste dumpsters, instruments, and trolleys, etc. as needed and at the City’s discretion.
3. Procure additional permits with the Park and city departments for concert specific functions.
4. Coordinate and schedule agreements with outside partners including: the El Paso Police Department, El Paso Fire Department, El Paso Zoo and Bowie High School.
5. Manage and coordinate temporary stagehands. Ensure tasks are completed in a timely manner and schedule breaks the day of the event.
6. Provide for all print marketing material as well as radio and television promotion.
7. Ensure advertising in-kind agreement with the media.
8. Ensure all media is properly accommodated according to park rules as the media often requests live broadcasts from the event.

9. Distribute a visitor survey card from the information table during the months of June, July, and August. A sample of the survey card to be used for the current year must be provided to the Superintendent at least 2 weeks before it is to be distributed to the public.
10. Set-up and strike a limited number of tables and chairs with canopy and/or tent across the street from the east side of the bowl seating area for its own use including distribution of visitor information and/or provide seating for a limited number of its own guests. Exact location, numbers, and space will be determined in consultation with Superintendent or an authorized representative on site.
11. Pay NPS's reasonable recovery cost for the necessary additional overtime, additional staff, and/or holiday pay as necessary with a maximum amount of \$300.00 per regular MUTS event and \$8,000.00 for the Fourth of July MUTS event. NPS must collaborate with MCAD to determine the necessity of these costs. If it becomes necessary for the costs to exceed the maximum amounts set forth herein, NPS and the City through MCAD must agree to the amount in writing.
12. Provide, as far in advance as possible, a complete schedule of events and listing of performing groups and dates of performances with immediate notification to the National Park Service of any changes to the scheduled event(s). The schedule, at the sole discretion of the Superintendent, will be posted to NPS websites and distributed to all normal communication media.
13. Ensure that its personnel and contracted performers remove all personal belongings, equipment, and supplies when leaving the grounds after the scheduled event(s).
14. Provide copies of all contract(s), amendments/modifications and attachments between them and the performers two (2) weeks prior to the event to the NPS. The NPS requires this documentation to verify that there is a legally executed contract with City. This copy will become part of the NPS administrative file.
15. Request in writing, no less than a minimum of two (2) weeks in advance, any and all proposals which cause changes, modifications, or additions to the ordinary operations. This includes, but is not limited to, pre-concert or performance hospitality or VIP events, receptions, parties, promotions, etc. and/or anything which would require additional NPS staff time, permitting authorizations, or significant operational adjustments.
16. Ensure all City and MCAD event personnel and VIPs are instructed to park only in marked spaces in the main lot. City and MCAD will not exceed the authorized space assignments per event.
17. Provide and issue windshield passes which must be displayed during the event. The pass design can be of MCAD's choosing and is authorized for access to general parking. All vehicles must have an official "windshield pass" displayed on the vehicle dashboard.
18. Only temporarily park behind the visitor center/administration building to load and unload personnel and equipment, or to transport performers using the dressing rooms, lunchroom or other facilities. There is an exception for long-term parking

- of 4 (four) MCAD vehicles either behind the Visitor Center/Theater or the outdoor stage.
19. Only NPS pre-approved signs, flags, banners, etc. may be displayed on self-supporting structures and/or supported in designated areas on the stage or other designated area(s) recognizing the city, department, donors and/or (non-commercial messages only) sponsors. All such markings must be removed immediately after the event.
 20. Collecting any money or selling any merchandise including, but not limited to T-shirts, clothing, arts and crafts, and recordings (i.e. CDs, cassettes, records, etc.) may only be done with an approved Commercial Use Authorization by the Superintendent. A minimum of two (2) weeks advance written notice is required for a request and a final authorization by the Superintendent is mandatory for any such operations. Samples of items for sale must be submitted to the Superintendent for approval as a part of NPS's Commercial Use Authorization process. Alcoholic beverages may not be sold to the public at any event at the Park.
 21. Promotional events, give-aways, raffles, blood drives or any similar activities conducted by any one person, agency, or organization including sponsors or donors without the expressed written permission of the Superintendent is strictly prohibited. A minimum of two (2) weeks advance written notice is required for a request and a final authorization by the Superintendent is mandatory for any such operations.
 22. Performers and MCAD will not restrict in any way, NPS employees or contractors in the performance of their duties and from access to the stage and backstage area during the events.
 23. The July 4th Celebration for El Paso will be sponsored by City as a part of MUTS programming, and may be held at the Park if agreed upon by both Parties. The 4th is a massive event and creates a different scale of operations with much more staff, pre-event preparation, and after event clean-up. City will ensure that they have all the necessary permitting through the City of El Paso in order to hold the fireworks portion of the event. The plan for this event must be submitted to the Park Superintendent six (6) weeks prior to the event for review and approval if the event will be held at the Park.

C. The parties further agree as follows:

1. It is impossible to hold widely attended events (indoor or outdoor) at the Chamizal without participation of:
 - a. Bowie High School, El Paso Independent School District – parking;
 - b. City of El Paso - Police, Emergency Medical Services, supplemental portable toilets based on crowd size, dumpsters and additional clean-up crews for following morning(s) on grounds maintenance;
 - c. El Paso Solid Waste Disposal – Trash and solid waste disposal; and
 - d. El Paso Zoo and/or El Paso County Coliseum - parking (with shuttle bus service).

2. Therefore City will arrange for the above-mentioned needed assistance from these groups when needed. The above list is not all-inclusive. There may be other providers of “services” besides those listed above, as determined necessary and agreed by MCAD and NPS. There may be other services that are needed depending on the event being held.
3. This Agreement will replace the old system of Special Use Permitting thus streamlining the process to hold MUTS at the Park and eliminating the NPS Application fees.

ARTICLE IV – TERM OF AGREEMENT

This Agreement will be effective for a period of five years from the date of final signature, unless it is terminated earlier by one of the parties pursuant to Article X that follows.

ARTICLE V – KEY OFFICIALS

A. Key officials are essential to ensure maximum coordination and communications between the parties and the work being performed. They are:

1. For the National Park Service:

Superintendent
Chamizal National Memorial
800 South San Marcial Street
El Paso, Texas 79905
(915) 532-7273 x108

2. For the City of El Paso:

Museum and Cultural Affairs Department Director
2 Civic Center Plaza
El Paso, Texas 79901
(915) 541-4481

B. **Communications** - City will address any communication regarding this Agreement to the Superintendent.

C. **Changes in Key Officials** - Neither the NPS nor City may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

ARTICLE VI – FUNDING

Funds will not be exchanged under this Agreement. In-kind services and cost recovery items will be exchanged as set forth in Article III.

ARTICLE VII – PRIOR APPROVAL

Not applicable.

ARTICLE VIII – REPORTS AND/OR OTHER DELIVERABLES

Upon request and to the full extent permitted by applicable law, the parties will share with each other final reports of incidents involving both the interests and concerns of the parties (such as missing children, altercations between visitors, etc.).

ARTICLE IX – PROPERTY UTILIZATION

Unless otherwise agreed to in writing by the parties, any property furnished by one party to the other will remain the property of the furnishing party. Any property furnished by the NPS to City during the performance of this Agreement will be used and disposed of as set forth in NPS Property Management Regulations.

ARTICLE X – MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the parties.
- B. Either party may terminate this Agreement by providing the other party with thirty (30) days advance written notice. In the event that one party provides the other party with notice of its intention to terminate, the parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences.

ARTICLE XI – STANDARD CLAUSES

A. Civil Rights

During the performance of this Agreement, the participants agree to abide by the terms of U.S. Department of the Interior - Civil Rights Assurance Certification, nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

B. Promotions

The City will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications) which states or implies Governmental, Departmental, bureau, or Government employee endorsement of a product, service, or position which City represents. No release of information relating to this Agreement may state or imply that the Government approves of the City's work product or considers the City's work product to be superior to other products or services.

C. Public Information Release and Publications of Results of Studies

No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

ARTICLE XII – SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below.

FOR THE NATIONAL PARK SERVICE:

Signature: _____

Name: Lila L. Walker

Title: Acting Superintendent, Chamizal National Memorial

Date: _____

FOR THE CITY OF EL PASO:

Signature: _____

Name: Joyce A. Wilson

Title: City Manager

Date: _____

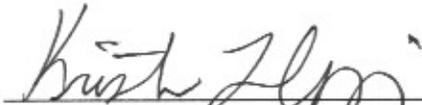
APPROVED AS TO CONTENT:

Signature:  _____

Name: Sean P. McGlynn _____

Title: Director, Museum and Cultural Affairs Department _____

APPROVED AS TO FORM:

Signature:  _____

Name: Kristen L. Choi _____

Title: Assistant City Attorney _____