

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

DEPARTMENT: Mayor & Council

AGENDA DATE: April 2, 2013

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

DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action regarding a Resolution authorizing the use of discretionary funds to provide funding to support the Mighty Mujer Triathlon regional sporting event as a municipal purpose and to authorize the City Manager to enter into a sponsorship contract not to exceed \$5,300.00 to be used towards the costs of traffic control services with any funds in excess be applied towards the marketing and advertising of the Mighty Mujer Triathlon to be held Saturday, April 20, 2013.

BACKGROUND / DISCUSSION:

A Resolution and Contract were approved by Council on March 12, 2013, however, contractor requested the use of excess funds to be applied towards other event related expenses. The total amount of the contract remains the same as previously approved, not to exceed \$5,300.

PRIOR COUNCIL ACTION:

Council approved an original the Resolution and Contract stating the municipal purpose and total sponsorship amount not to exceed \$5,300 on March 12, 2013.

AMOUNT AND SOURCE OF FUNDING:

District 1 discretionary funds in an amount not to exceed \$200.00;
District 2 discretionary funds in an amount not to exceed \$2,500.00;
District 3 discretionary funds in an amount not to exceed \$300.00;
District 4 discretionary funds in an amount not to exceed \$500.00;
District 5 discretionary funds in an amount not to exceed \$300.00;
District 7 discretionary funds in an amount not to exceed \$1,000; and
District 8 discretionary funds in an amount not to exceed \$500.00.

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

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RESOLUTION

WHEREAS, the City Council of El Paso on March 12, 2013, passed a resolution authorizing the expenditure of discretionary funds for the Mighty Mujer Triathlon to be held on Saturday, April 20, 2013 (the "event").

WHEREAS, Real Big, LLC, the event's coordinator (the "CONTRACTOR"), determined that the cost of traffic control services would be less than the \$5,300 authorized by Council.

WHEREAS, the CONTRACTOR did not sign the contract approved by Council on March 12, 2013.

WHEREAS, the City and CONTRACTOR agree to change the contract to allow funds in excess of the cost of traffic control services to be paid to CONTRACTOR in order cover the costs of advertising and marketing the event.

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

That the City Council declares that the expenditure of discretionary funds in a total amount not to exceed \$5,300.00 to be used towards the costs of traffic control services with any funds in excess applied towards the marketing and advertising of the Mighty Mujer Triathlon to be held on Saturday, April 20, 2013, which provides women in El Paso the opportunity to participate in the all female triathlon and allows the City to promote itself and its event through a 10' x 10' expo space and to have its logo (seal) displayed on the race bag, website, newsletter and t-shirts, all of which serves a municipal purpose and is authorized; and that the City Attorney be authorized to negotiate and the City Manager be authorized to sign an appropriate contract to ensure that the funds are properly expended for the municipal purpose in the following amounts:

- District 1 discretionary funds in an amount not to exceed \$200.00;
- District 2 discretionary funds in an amount not to exceed \$2,500.00;
- District 3 discretionary funds in an amount not to exceed \$300.00
- District 4 discretionary funds in an amount not to exceed \$500.00;
- District 5 discretionary funds in an amount not to exceed \$300.00;
- District 7 discretionary funds in an amount not to exceed \$1,000.00; and
- District 8 discretionary funds in an amount not to exceed \$500.00.

Dated this ___ day of _____ 2013.

(Signatures on next page.)

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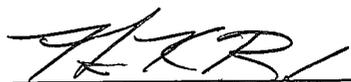
CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matthew K. Behrens
Assistant City Attorney

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

AGREEMENT

This Agreement 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 A Real Big, LLC (dba Race El Paso), hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, Contractor actively works with the Mighty Mujer Triathlon, planned to be held in El Paso on April 20, 2013, starting and ending at the Memorial Park Pool ("event");

WHEREAS, Contractor is in need of funding for the substantial costs, in particular for the costs of police traffic control services, marketing, and advertising for the event, and funds for such purpose are available from the discretionary funds for City Council Representative Districts 1, 2, 3, 4, 5, 7 and 8;

WHEREAS, Contractor has inadequate funding available to pay for these costs; and

WHEREAS, the City Council has found that the expenditure of District's 1, 2, 3, 4, 5, 7 and 8 discretionary funds to pay towards the costs of this event, which will provide women in El Paso the opportunity to participate in the city's first all female triathlon and allows the City to have its logo (seal) displayed and promote upcoming City events and sports facilities through the distribution of brochures to the participants benefits the community and serves a municipal purpose, for which the City is willing to expend the funds designated in this Agreement;

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

1. **DURATION AND SCOPE.** Contractor agrees to give the City a 10' x 10' expo space and allow the City to display its logo (seal) on the event's race bag, website, newsletter and t-shirts.
2. **CONSIDERATION.** The City shall provide monetary support of \$5,300.00 to Contractor available from the discretionary funds in the amounts indicated below of City Council Representative Districts to first be used towards the costs of police traffic control services and any excess to be applied to other direct costs of the event. The City shall apply the funding provided under this agreement to the costs of the police traffic control services provided by the City and the bill sent to the Contractor by the City (and its Police and/or Financial Services Departments) for the services provided by the City for police traffic control shall be reduced by \$5,300.00.

In the event that the cost of traffic control services is less than \$5,300, the excess amount shall be directly paid to the Contractor and be used to reimburse Contractor for the marketing and advertising of the event. The Contractor agrees to provide the City with receipts for marketing and advertising expenses, and the City agrees to process the request for reimbursement within thirty (30) days. In the event that Contractor does not hold the event, no such monetary support shall be provided or shall be due and owing to Contractor.

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District 1 discretionary funds in an amount not to exceed \$200.00;
District 2 discretionary funds in an amount not to exceed \$2,500.00;
District 3 discretionary funds in an amount not to exceed \$300.00;
District 4 discretionary funds in an amount not to exceed \$500.00;
District 5 discretionary funds in an amount not to exceed \$300.00;
District 7 discretionary funds in an amount not to exceed \$1,000.00; and
District 8 discretionary funds in an amount not to exceed \$500.00;

3. **LEGAL RELATIONSHIP.** Nothing in this Agreement shall be construed as creating a legal relationship of co-sponsorship or responsibility for the Contractor's event. 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.

4. **RELEASE AND INDEMNIFICATION. CONTRACTOR HEREBY RELEASES AND FOREVER DISCHARGES THE CITY FROM ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS OR CAUSES OF ACTION, WHETHER ON ACCOUNT OF PERSONAL INJURY, DEATH OR DAMAGE TO PROPERTY, RESULTING OR TO RESULT FROM THE EVENT. CONTRACTOR FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY SUCH CLAIMS, CAUSES OF ACTION OR DEMANDS, INCLUDING SUBROGATION, NOW OR IN THE FUTURE DUE TO THE EVENT, INCLUDING, BUT NOT LIMITED TO, CLAIMS, DEMANDS, DAMAGES, ACTIONS OR CAUSES OF ACTION FROM OR BY ANY PERSON.**

5. **SAFETY.** Contractor shall comply with all applicable laws, ordinances and regulations to include but not be limited to all City regulations and requirements relating to the permitting of events that utilize City facilities and City right-of-way, as are applicable.

6. **DISCRIMINATION.** Contractor, its officers, agents, servants, employees, volunteers and third parties will not discriminate on account of race, color, religion, sex or national origin, nor will it permit or allow any discrimination in the work done pursuant to this Agreement.

7. **NON-RELIGIOUS ACTIVITIES.** Contractor will conduct the activities set forth herein, insofar as it may involve the City of El Paso, in a manner that is exclusively non-religious in nature and scope; there will be no religious services, proselytizing, instruction, or any other religious influences in connection with the group insofar as it may involve the City of El Paso. Contractor shall not represent that the City of El Paso is in support of or in favor of any religious services, proselytizing, instruction, or any other religious influences.

8. **HANDICAPPED ACCESSIBILITY STANDARDS.** Contractor agrees, that in the performance of this Agreement that it will comply with the Americans with Disabilities Act ("ADA"), as may be required by law. Contractor, if required, must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

9. **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable federal, state and local laws and regulations; all City ordinances and all codes and regulations. Failure to do so in any manner which materially impairs the quality of performance hereunder or affects the administration of the funds provided hereunder shall constitute a material breach of this Agreement.

10. **TERMINATION.** Either party may terminate this Agreement by sending written notice to the other if the other is in default in a matter of serious importance to the aggrieved party. Termination shall be without prejudice to any obligation by one party to the other which shall have accrued and be owing prior thereto.

11. **SEVERABILITY.** Every provision of this Agreement 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 Agreement.

12. **NOTICES.** All notices and communications under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Services, 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, TX 79950-1890

CONTRACTOR: Race El Paso
P.O. Box 23208
El Paso, Texas 79923

13. **ENTIRE AGREEMENT.** This Agreement constitutes and expresses the entire agreement of the parties hereto in reference to any of the matters herein provided for or herein discussed or mentioned in reference to the providing of such services, all promises, representatives, and understandings relative hereto being herein merged.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of March 2013.

(Signatures on next page)

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

MKB
Matthew K. Behrens
Assistant City Attorney

A REAL BIG, LLC (DBA RACE EL PASO):

Printed Name: _____
Title: _____

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