

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Financial and Administrative Services
AGENDA DATE: April 20, 2010
CONTACT PERSON/PHONE: Carmen Arrieta-Candelaria, Chief Financial Officer, 541-4293
DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action on a Resolution that the City Manager be authorized to sign the First Amendment to the Operation and Maintenance Agreement by and between the City of El Paso and the Greater El Paso Chamber of Commerce Foundation regarding the Star on the Mountain program dated August 25, 2009, for the purposes of extending the term for an additional year expiring on April 30, 2011, amending the definition of the Reimbursable Expenses to include administrative costs, reflecting changes to the lease with 88 Investments, Inc. for the use of the site, and clarifying the billing procedure. The O&M costs shall not exceed \$50,000 on an annual basis.

BACKGROUND / DISCUSSION:

In August 2009, the ownership of the Star* was transferred to the City of El Paso from the Greater El Paso Chamber of Commerce (the "Chamber"). At the same time, the City entered into an agreement with the Chamber to operate and maintain the Star.

*In August 2009, the Bill of Sale and Equipment Purchase Agreement transferred all rights, title and interest in the Equipment as defined in the agreement. The Equipment includes all lights, poles, electrical panels, software and hardware associated with the operation of the Star. In addition, the Chamber donated all its legal rights in its "Star on the Mountain" Program ("Program") including but not limited to its copyrights for the Star, the Star Pin and a commemorative and donation program which assists with the costs of lighting the Star for an evening, to the City.

Under the current Operation and Maintenance Agreement, the Chamber supervised and oversaw the lighting and maintenance of the Star and operated the Program. The term of this agreement was from August 1, 2009 through April 30, 2010. The proposed First Amendment amends the definition of the reimbursable expenses to allow the Chamber to recover a portion of its administrative costs, reflects the changes to the Lease agreement with 88 Investments, and clarifies the billing procedure such that the City would only pay for those costs that are not covered by donations and program fees. To date, the City has incurred less than \$6,000 (1/2 of all billed costs to date) for the O&M for the Star from the inception of the original agreement. The El Paso Electric Company (EPEC) has paid for the other half of the costs to date as per their commitment to the Star Program. EPEC has indicated that they will continue to support the Star and its operation for the next year and City staff will continue to seek monetary support in future years.

PRIOR COUNCIL ACTION:

August 25, 2009

AMOUNT AND SOURCE OF FUNDING:

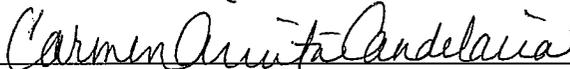
\$50,000 for the annual O&M; source of funding is General Fund (\$25,000 will come from the El Paso Electric Company)

BOARD / COMMISSION ACTION:

N/A

*****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

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

That the City Manager be authorized to sign the First Amendment to the Operation and Maintenance Agreement ("*Agreement*") by and between the City of El Paso and the Greater El Paso Chamber of Commerce Foundation regarding the Star on the Mountain Program dated August 25, 2009, for the purposes of extending the term for an additional year expiring on April 30, 2011, amending the definition of the Reimbursable Expenses to include administrative costs, reflecting changes to the lease with 88 Investments, Inc. for the use of the site, and clarifying the billing procedure.

ADOPTED this _____ day of _____ 20__.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONENT:

Carmen Arrieta Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**FIRST AMENDMENT TO OPERATION
AND MAINTENANCE AGREEMENT**

This First Amendment to the Operation and Maintenance Agreement ("First Amendment") is made by and between the City of El Paso ("City") and The Greater El Paso Chamber of Commerce Foundation ("Chamber") on this ____ day of _____, 2010.

WHEREAS, the City and the Chamber entered into an Operation and Maintenance Agreement ("Agreement") dated August 25, 2009 for the management and operation services of the Star on the Mountain Program ("Program") by the Chamber; and

WHEREAS, the City and the Chamber now desire to amend the Agreement to extend the term one (1) additional year, amend the provisions related to the lease agreement between the with Chamber and 88 Investment, Inc. effective May 1, 2009, and to provide for monthly payment of administrative expenses to the Chamber.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SERVICES.** The City and the Chamber mutually agree that paragraph 1, Services be revised to read as follows:

Services. The Chamber shall supervise and oversee the lighting and maintenance of the Star and shall operate the Program, including but not limited to soliciting contributions and donations for the Program and providing publicity for the participants in the Program. Chamber employees will perform the management and operation of the Program.. The Chamber shall be responsible for the hiring and training of appropriate staff, and for ensuring that the Program is adequately staffed during all Chamber business hours of operation.

The Chamber shall provide publicity and acknowledgements for individuals and entities participating in the Program. All Program information materials must have the prior written approval of the City Manager.

During the term of this Agreement, the City reserves the right to light the Star for 10 nights at no cost to the City in honor of, or in commemoration of City events proclamations or other occasions designated by the City Manager. The Chamber will provide the same advertisements and acknowledgements in connection with the City's Star honorees as it does for all other participants in the program

The Chamber will provide the City with a monthly report of its services, including an accounting of contributions and donations.

The City will contract directly with 88 Investments, Inc. to secure the use of the land, where the Star on the Mountain is located during the term of this Agreement. In the event the City is unable to secure the use of the site upon which the Star is located, or if the right of access is terminated during the term of this Agreement, the City may, at its option terminate this Agreement and all obligations arising from this Agreement shall terminate other than the obligation of the City to provide payment to the Chamber of Reimbursable Expenses incurred prior to its receipt of written notice of termination.

2. **CONSIDERATION.** The City and the Chamber mutually agree that paragraph 2., Consideration, is revised to read as follows:

2. *Term.* In consideration of the services to be performed by the Chamber, the City agrees to acknowledge the Chamber's participation with the Program by naming the Chamber as a supporter of the Program in all Program publications. The City agrees to reimburse the Chamber for the following costs associated with the lighting of the Star: 1) utilities to light the Star; 2) liability insurance; 3) maintenance costs; and 4) administrative costs in an amount of \$500 per month. Collectively, these costs will be referred to as the "Reimbursable Expenses".

The Chamber shall submit to the City itemized monthly statements for Reimbursable Expenses offset by any revenues (donations, fees, etc.) received by the Chamber to operate the Star. Copies of receipts, documentation of any and all donations and invoices paid to third parties in connection with the Program must accompany invoices. Payment will be made within thirty (30) days of receipt and approval of invoices by the City. Reimbursable Expenses required for the operation of the Program less those amounts offset by any revenues for the term of this Agreement shall not exceed \$50,000.00.

3. **TERM.** The City and the Chamber agree that the Agreement is hereby extended for an additional twelve (12) month period from May 1, 2010 to April 30, 2011, unless sooner terminated pursuant to the terms of the Agreement.
4. **LIABILITY INSURANCE.** In the event Chamber, or any agent of Chamber contracts with a third party to make improvements to the Premises, Chamber shall provided City with notice at least 48 hours prior to the date the installation of the improvements and will provide City with a certificate of insurance to evidence the fact Chamber and 88 Investments, Inc. are additional named insureds on the general liability policy.
5. **RATIFICATION.** Except as herein amended, all other terms and conditions of the Lease, not specifically changed by this First Amendment, shall remain unchanged and in full force and effect.
6. **EFFECTIVE DATE.** Regardless of the date of execution, this First Amendment shall be effective on May 1, 2010.

IN WITNESS WHEREOF, this First Amendment was approved on the date first noted above.

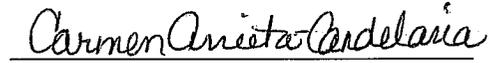
CITY OF EL PASO

Joyce A. Wilson
City Manager

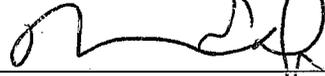
APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Carmen Arrieta-Candelaria
Chief Financial Officer

**THE GREATER EL PASO CHAMBER
OF COMMERCE FOUNDATION**

By: 
Name: Richard E. Dayoub
Title: President and CEO