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

DEPARTMENT: **Planning and Economic Development**

AGENDA DATE: **Consent: April 24, 2012**

CONTACT PERSON NAME AND PHONE NUMBER: Mirian Spencer, (915) 541-4482, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 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 Paisano Drive during Puebla En El Paso on May 5th and 6th, 2012 and event scheduled to exceed four hours in length and found by the City to serve a public purpose (NESV12-00015) District 8.

BACKGROUND / DISCUSSION:
Entravision Communications Corporation has requested permission to utilize portions of Paisano Drive (US62/85) from 2:00 am Saturday, May 5, 2012 to 1:00 pm Sunday, May 6, 2012. The closures of will prevent access for a period in excess of four hours. As such, TxDOT requires the Agreement for the Temporary Closure of State Right-of-Way (Form TEA 30 A) to be completed by the City of El Paso.

The event serves a public purpose by advocating for economic development and tourism within the Downtown Area.

As part of the approval process, the applicant has provided insurance, with the City named as co-insured.

PRIOR COUNCIL ACTION:
A related resolution for the sale and service of alcoholic beverages will be considered by City Council on April 24, 2012.

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
The Downtown Management District (DMD) AdHoc Committee considered the request at the April 19, 2012 meeting.

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

DEPARTMENT HEAD: _____

Mathew S. McElroy, Deputy Director
Planning and Economic Development

Information copy to appropriate Deputy City Manager

R E S O L U T I O N

WHEREAS, The City of El Paso (hereinafter referred to as "The City") has granted Entravision Communications Corporation permission to utilize portions of City rights-of-way for Puebla En El Paso (hereinafter referred to as "Event"); and

WHEREAS, The City has found the Event serves a public purpose; 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, the Event utilizes both City and State rights-of-way; 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 of the Event, provides a means of cooperating with the City for the temporary closure of State rights-of-way, provided each closure is in accordance with the requirements of 43 TAC, Section 22.12 and the City enters into an Agreement for the Temporary Closure of State Right of Way for each Event.

BE IT RESOLVED BY THE CITY COUNCIL OF 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 Paisano Drive during Puebla En El Paso on May 5th and 6th, 2012, an event scheduled to exceed four hours in length and found by the City to serve a public purpose.

ADOPTED this _____ day of April, 2012.

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Deputy Director
Planning and Economic Development

Matter 12-1036-176 PL# 110563
Resolution / TxDOT Agreement for Temp Closure of State ROW
Puebla En El Paso / May 2012

COSB

Agreement No._____

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."

W I T N E S S E T H

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Paisano Drive (US 85/62), in El Paso, County; and

WHEREAS, the local government has requested the temporary closure of Paisano Drive (US 85/62), for the purpose of Puebla En El Paso, from 2:00 am Saturday, May 5, 2012 to 1:00 pm Sunday, May 6, 2012 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 24th day of April, 2012, 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 Attn: Joyce Wilson City Manager 2 Civic Center Plaza, 10th Floor El Paso, Texas 79901	Texas Department of Transportation Attn: Robert Bielek, P.E. El Paso District Engineer 13301 Gateway West El Paso, Texas 79928-5410

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.

Agreement No._____

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:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Deputy Director
Planning and Economic Development

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
Puebla En El Paso

Event Description:

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

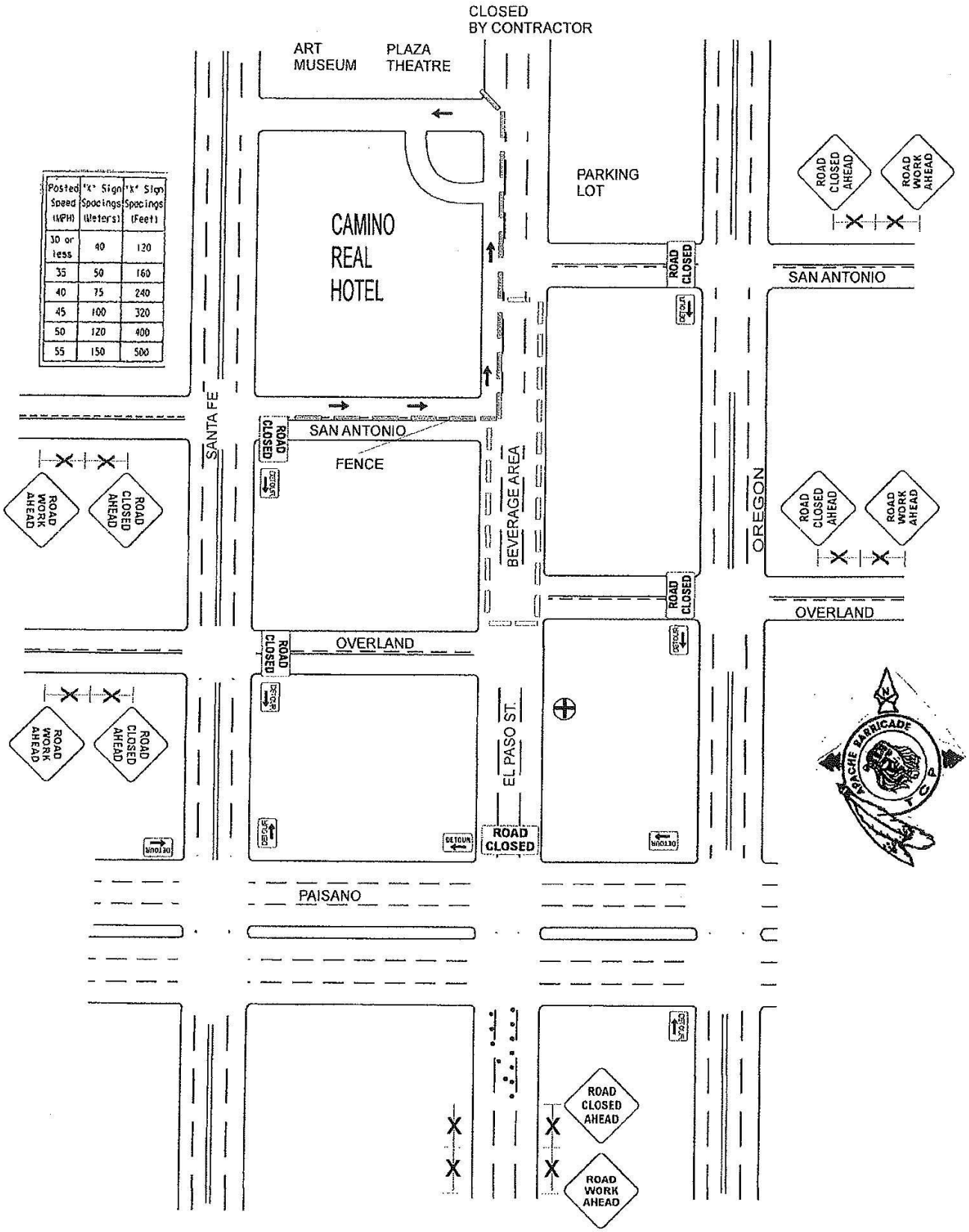
1. El Paso Street between West Paisano Drive and San Antonio Avenue.
2. Overland Avenue between Santa Fe Street and Oregon Street.
3. San Antonio Avenue between Santa Fe Street and Oregon Street.

Agreement No._____

Exhibit B
City Council Resolution

Agreement No._____

Exhibit C
Location Map



Posted Speed (MPH)	"X" Sign Spacings (Meters)	"X" Sign Spacings (Feet)
30 or less	40	120
35	50	160
40	75	240
45	100	320
50	120	400
55	150	500

STATE OF TEXAS)
) CONTRACT
COUNTY OF EL PASO)

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 **Entravision Communications Corporation,** a Texas Limited Liability Corporation, hereinafter referred to as "Contractor."

WHEREAS, Contractor has hired staff to produce **Puebla En El Paso,** 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 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.

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 2:00 am Saturday, May 5, 2012 to 1:00 pm Sunday, May 6, 2012.

2 **CONSIDERATION.**

2.1 The Contractor agrees to provide the following services:

2.1.1 Manage and operate the Event May 5-6, 2012, upon the area approved by the City through Special Privilege Permit No. NESV12-00015, dated April 19, 2012, or as modified in writing by the parties.

2.1.2 Comply with all terms of the Permit No. NESV12-00015, 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 15.08.120 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.

3 IN-KIND ASSISTANCE AND PAYMENT OF CERTAIN FEES.

3.1 Contractor shall obtain the permit for the Event as set forth in Section 15.08.120 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.

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 2 Civic Center Plaza El Paso, Texas 79901-1196
WITH COPY TO:	Planning and Economic Development City of El Paso 2 Civic Center Plaza El Paso, TX 79901-1196
CONTRACTOR:	Entravision Communications Corporation 5426 North Mesa El Paso, TX 79912 Attn: Isis Ponce

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.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

Date: _____

APPROVED AS TO FORM:

_____
Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Deputy Director
Planning and Economic Development

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2012.

CONTRACTOR:

_____

Name Printed: Isis Ponce

Title:_____

Date: _____

Exhibit A