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

DEPARTMENT: **City Development Department**

AGENDA DATE: **April 30, 2013, Consent**

CONTACT PERSON NAME AND PHONE NUMBER: **Mirian Spencer, (915) 541-4007, 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, acting by and through the Texas Department of Transportation, for the temporary closure and use of state owned and operated Mesa Street (SH 20), during the Neon Desert Music Festival from 6:00 pm Friday, May 24, 2013 through 10:00 pm Monday, May 27, 2013, an event scheduled to exceed four hours in length and found by the City to serve a public purpose (NESV13-00012) District 8.

BACKGROUND / DISCUSSION:
Splendid Sun Productions, LLC has requested permission to utilize portions of Mesa Street (SH 20) from 6:00 pm Friday, May 24, 2013 to 10:00 pm Monday, May 27, 2013. The closure 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 30A) 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 and after hours usage of Cleveland Square Park and San Jacinto Plaza will be considered by City Council on April 30, 2013.

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
The Downtown Management District AdHoc Committee APPROVED the special privilege (NESV13-00012) on April 18, 2013.

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

DEPARTMENT HEAD: _____

Mathew S. McElroy, Director
City Development Department

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 Splendid Sun Productions, LLC permission to utilize City rights-of-way for the Neon Desert Music Festival from 6:00 pm Friday, May 24, 2013 through 10:00 pm Monday, May 27, 2013 (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 will utilize 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 for the Event, provides a means of cooperating with the City for the temporary closure of State right-of-way, provided the 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 the Event (Form TEA 30A)

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, acting by and through the Texas Department of Transportation, for the temporary closure and use of State owned and operated Mesa Street (SH 20), during the Neon Desert Music Festival from 6:00 pm Friday, May 24, 2013 through 10:00 pm Monday, May 27, 2013, an event scheduled to exceed four hours in length and found by the City to serve a public purpose.

ADOPTED this 30th day of April, 2013.

THE CITY OF EL PASO

_____
John F. Cook,
Mayor

ATTEST:

_____
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:

_____
Lauren K. Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Mathew S. McElroy, Director
City Development Department

Matter # 13-1007-708/PL # 173682
Reso Approving TxDOT Street Closure Agreement
Neon Desert Music Festival May 2013

LKF

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 Mesa Street (SH 20), in El Paso, County; and

WHEREAS, the local government has requested the temporary closure of Mesa Street (SH 20), between Franklin Avenue and Mills Avenue for the purpose of Neon Desert Music Festival, from 6:00 pm Friday, May 24, 2013 to 10:00 pm Monday, May 27, 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 30th day of April, 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:

Local Government:	**State:**
City of El Paso Attn: Joyce Wilson City Manager PO 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

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 K. Ferris
Assistant City Attorney

APPROVED AS TO CONTENT:

_____

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

Exhibit A
Neon Desert Music Festival

Event Description:

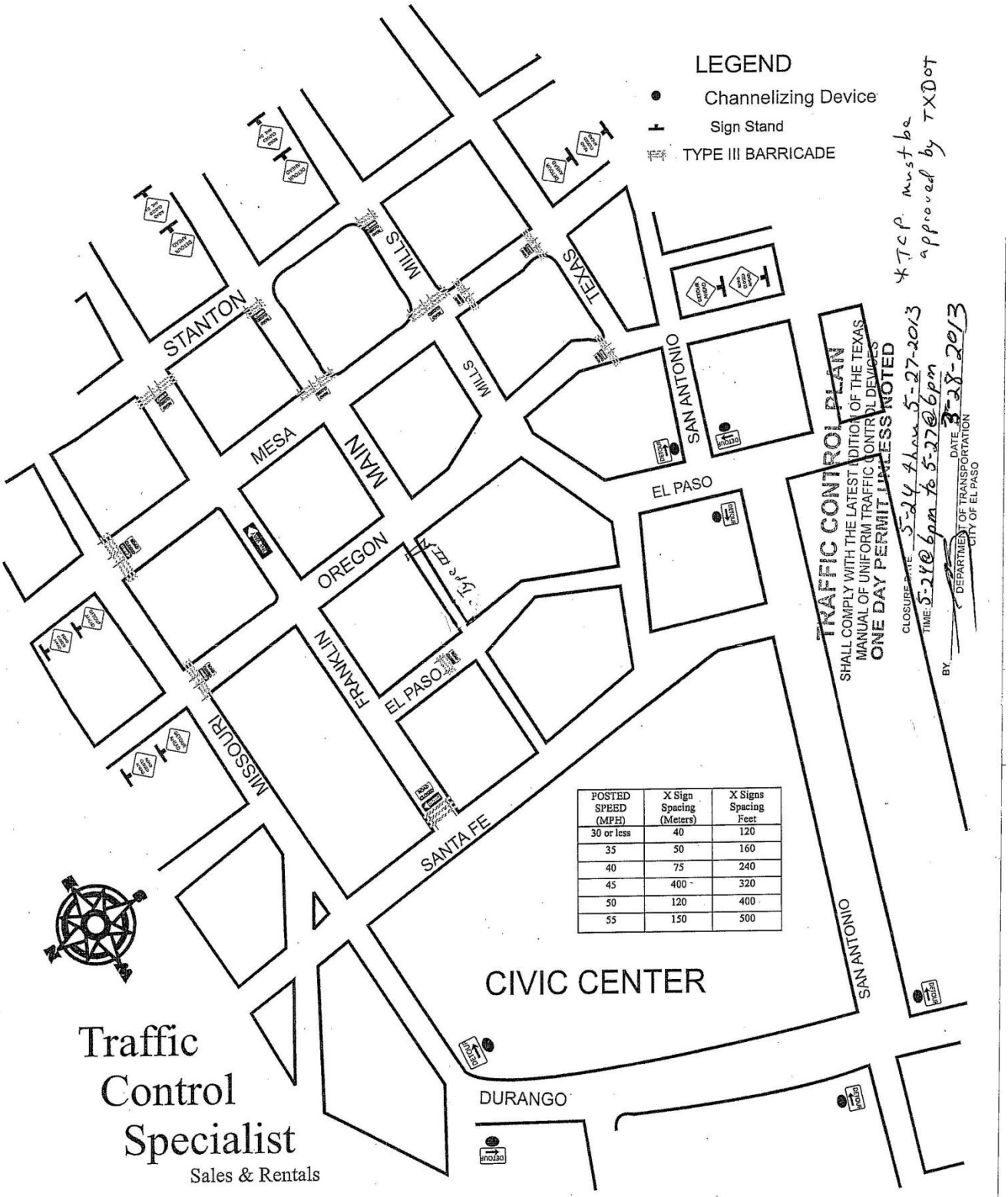
A temporary street closure of Oregon Street between Missouri Avenue and Texas Avenue, Franklin Avenue between Santa Fe Street and Mesa Street, Main Drive between Oregon Street and Mesa Street, Mills Avenue between Oregon Street and Mesa Street, Mesa Street between Franklin Avenue and Mills Avenue, and El Paso Street between Main Drive and Franklin Avenue from 6:00 pm Friday, May 24, 2013 to 10:00 pm Monday, May 27, 2013.

Exhibit B
City Council Resolution

Agreement No._____

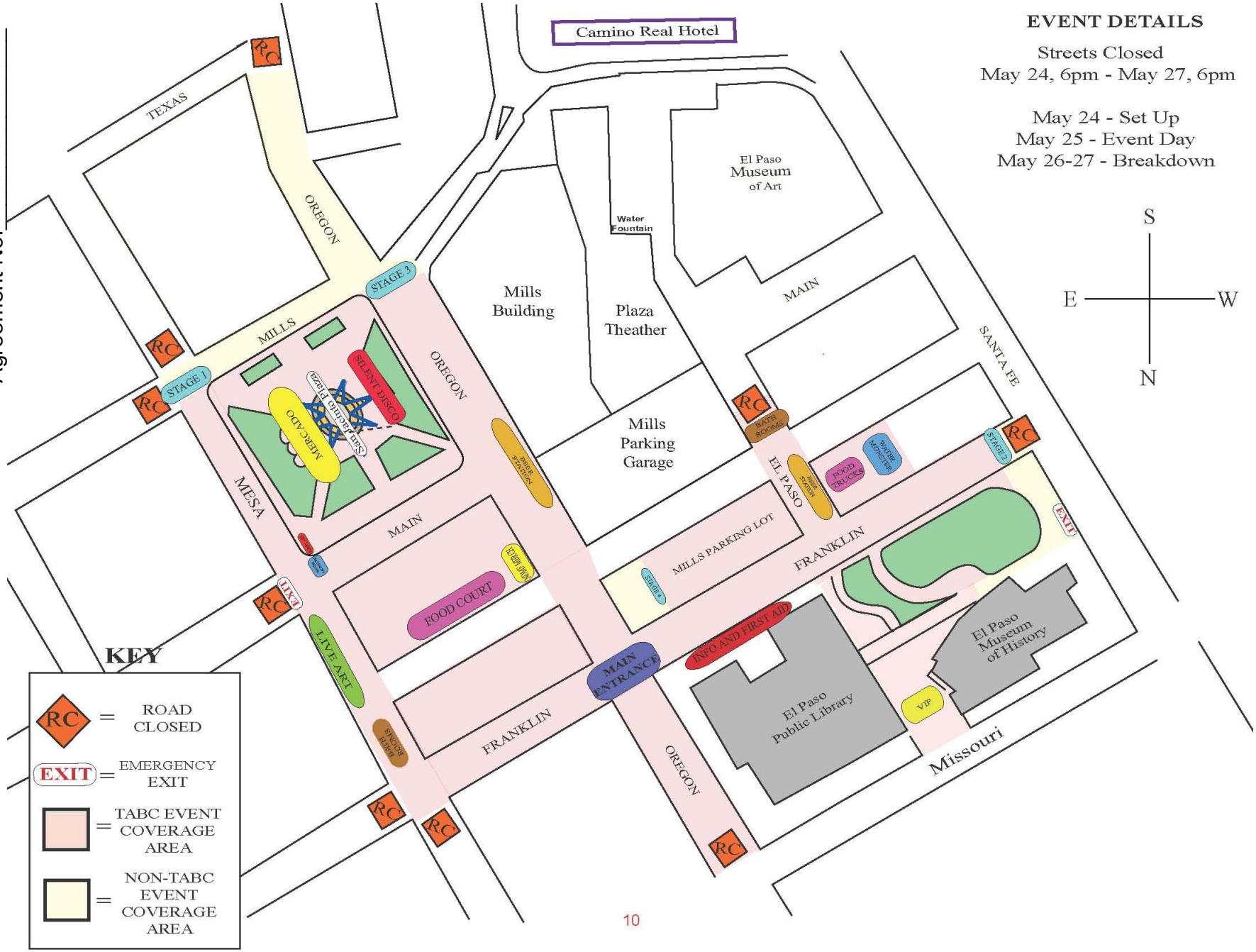
Exhibit C
Location Map

NETC13-01098



POSTED SPEED (MPH)	X Sign Spacing (Meters)	X Signs Spacing Feet
30 or less	40	120
35	50	160
40	75	240
45	400	320
50	120	400
55	150	500

12


EVENT DETAILS
Streets Closed
May 24, 6pm - May 27, 6pm
May 24 - Set Up
May 25 - Event Day
May 26-27 - Breakdown
S
E
W
N
Camino Real Hotel
El Paso Museum of Art
Water Fountain
Mills Building
Plaza Theather
Mills Parking Garage
MAIN
SANTA FE
TEXAS
OREGON
MILLS
STAGE 1
STAGE 2
STAGE 3
MESA
MIERCADO
DISCO LUNETIS
Saint Antonio Plaza
BEER STATION
FOOD TRUCKS
WATER MONSTER
BATH ROOMS
EL PASO
MILLS PARKING LOT
FRANKLIN
FOOD COURT
LIVE ART
BATH ROOMS
MAIN ENTRANCE
INFO AND FIRST AID
El Paso Public Library
El Paso Museum of History
VIP
Missouri
EXIT
RC
KEY
RC = ROAD CLOSED
EXIT = EMERGENCY EXIT
= TABC EVENT COVERAGE AREA
= NON-TABC EVENT COVERAGE AREA