CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: DEVELOPMENT SERVICES

AGENDA DATE: MAY 22, 2007

CONTACT PERSON/PHONE: HARRY E. STEELE, DEVELOPMENT SERVICES / (915) 541-4570

DISTRICT(S) AFFECTED: ALL

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

Discussion and action on submitted parade applications for the City's Fiscal Year 2008 and a determination on which events the City will support at no cost or at a reduced cost to the applicant pursuant to Municipal Code Section 13.36.050, F., Costs and Fees.

A. Rotary Club of West El Paso-FY'07

Resolution that the City Manager be authorized to execute an agreement between the City of El Paso and the Rotary Club of West El Paso for the Independence Day Celebration on July 4, 2007; and under the terms of which agreement the City will provide the necessary funds to cover the costs of the on-duty police traffic-control assistance.

B. Rotary Club of West El Paso-FY'08

Resolution that the City Manager be authorized to execute an agreement between the City of El Paso and the Rotary Club of West El Paso for the Independence Day Celebration on July 4, 2008; and under the terms of which agreement the City will provide the necessary funds to cover the costs of the on-duty police traffic-control assistance.

C. United American Veterans Organization

Resolution that the City Manager be authorized to execute an agreement between the City of El Paso and the United American Veterans Organization for the Veteran's Day Parade on November 10, 2007; and under the terms of which agreement the City will provide the necessary funds to cover the costs of the on-duty police traffic-control assistance.

D. West Texas of Confederation of Clubs

Resolution that the City Manager be authorized to execute an agreement between the City of El Paso and the West Texas Confederation of Clubs for the Motorcycle Toy Run on November 4, 2007; which constitutes an important public purpose of benefit to the City and citizens of el Paso; and under the terms of which agreement the City will provide the necessary funds to cover the costs of the on-duty police traffic-control assistance, not to exceed forty (40) on-duty police officers and forty (40) vehicles for the parade.

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?

Applicants can obtain co-sponsorship from the City under Section 13.36.050 for parades which have a recognized public purpose.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? If so, when?

A. United American Veterans Organization – October 10, 2006
B. West Texas of Confederation of Clubs – October 10, 2006

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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?

El Paso Police Department – General Fund Budget. No line items identified for these parades.

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

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

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

OTHER: _____

(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:** _____

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RESOLUTION

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

THAT the City Manager be authorized to execute an agreement between the City of El Paso and the Rotary Club of West El Paso for the Independence Day Celebration on July 4, 2008; and under the terms of which agreement, the City will provide the necessary funds to cover the costs of the on-duty police traffic control assistance.

PASSED AND APPROVED this _____ day of _____, 2007.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Roberta B. Cross
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
R. Alan Shubert, P.E., Director
Development Services Department

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Document Author: RCRO

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT

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 the **ROTARY CLUB OF WEST EL PASO**, a Texas nonprofit corporation, hereinafter referred to as "Contractor."

WHEREAS, Contractor has hired staff to produce the **INDEPENDENCE DAY CELEBRATION,** 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 by the City in the Event will provide direct benefits to the public in the form of public safety services.

WHEREAS, the City Council finds that participation in the Event by the City will provide economic and health benefits to the City and it will serve as a rallying point for community spirit and support, and as such, constitutes an important public purpose of benefit to the City and citizens of El Paso, 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 July 4, 2008, from 9:00 a.m. to 10:30 a.m.

2. **CONSIDERATION.**

2.1 The Contractor agrees to provide the following services:

2.1.1 Manage and operate the Independence Day Celebration on July 4, 2008, upon the route approved by the City through the Parade Permit No._____, dated_____ _____, 2007, or as modified in writing by the parties.

2.1.2 Comply with all terms of the Permit No._____, 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 13.36.080 of the City Code.

2.2 In exchange for Contractor's services, the City agrees to provide a financial contribution in an amount up to FOUR THOUSAND ONE HUNDRED FIVE AND 44/100 DOLLARS ($4,105.44) to cover public safety costs of the Event.

2.2.1 This assistance shall be as necessary as determined by the City in accordance with Section 13.36 of the City Code.

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2.2.2 Provide stand-by assistance from City Fire Department personnel and Emergency Medical Service personnel as determined to be appropriate by the City. Such personnel may inspect equipment involved in the Event and perform any other assignments as may be determined solely by the City to be appropriate. However, nothing in this agreement shall create any additional legal duties or responsibilities other than those general duties to provide police, fire or emergency medical protection or assistance which may or may not already exist for the general public, and the City and its employees cannot and do not guarantee or otherwise provide any assurances as to the adequacy of or safety regarding any equipment which the City's employees may inspect.

3. IN-KIND ASSISTANCE AND PAYMENT OF CERTAIN FEES.

3.1 Contractor shall obtain the permit for the Event as set forth in Section 13.36 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.

3.3 The City shall pay the public safety costs for the Event in an amount up to $4,105.44 within thirty (30) days of processing of such costs.

3.4 Contractor shall provide recognition of the City's funding for the Event by including the City logo in the Event and/or advertisements of the Event, as possible, with the City's prior approval of such display.

4. LEGAL RELATIONSHIP. The City is not and shall not be considered a sponsor or co-sponsor of the Event. Nothing in this Contract shall be construed as creating a legal relationship of co-sponsorship or responsibility for the promotion, conducting, or operation of the Event or the business activities of any Event sponsors 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 agent between the parties.

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.

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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 which 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 provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause.

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 City Clerk, the City Attorney's Office, and the Development Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Contract shall be grounds for cancellation of this Contract.

7.2 **INDEMNITY. As a condition of the granting of this Contract, the Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS 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 which 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

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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.

11.4.1 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

CONTRACTOR: ROTARY CLUB OF WEST EL PASO
Rick LeBello
913 Totonaca Lane
El Paso, Texas 79912

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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 non-assigning parties.

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.

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.

19. EFFECTIVE DATE. This Contract is effective as of the ___ day of _____, 2007.

(Signatures on following page)

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONTRACT

Signature Page

ROTARY CLUB OF WEST EL PASO

Rick LoBello
Title: Parade Co-chair

CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Roberta B. Cross
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., Director
Development Services Department

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