

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

DEPARTMENT: DEVELOPMENT SERVICES

AGENDA DATE: AUGUST 29, 2006

CONTACT PERSON/PHONE: LARRY NICHOLS, DEVELOPMENT SERVICES, (915) 541-4557

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.

That the City Manager is authorized to sign Temporary Rights-of-Entry, approved as to form by the City Attorney, which will allow private property owners to access their properties from City properties and City controlled public rights-of-way to repair, protect and prevent further damage to their properties as a result of Storm 2006.

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?

N/A

PRIOR COUNCIL ACTION:

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

N/A

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?

N/A

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: _____

RESOLUTION

WHEREAS, the El Paso City Council has approved Ordinance No. 16015, which allows the City Manager to negotiate and enter into contracts, agreements for the rental of or which grant the use of City facilities for special events, when doing so is an appropriate use of the particular City facility and done in accordance with any ordinance guidelines or policies that may have been adopted or established by the City Council, and

WHEREAS, the City anticipates that it will receive requests from various property owners for permission to enter onto City properties and City controlled public rights-of-way to access their properties to repair, protect and prevent further damage to their properties as a result of Storm 2006, and

WHEREAS, the City Council finds that because President George W. Bush declared a federal disaster because of Storm 2006 and it is necessary to act to prevent further damage to the property of its residents, and this is valuable consideration to the City,

NOW THEREFORE BE RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO,

That the City Manager is authorized to sign Temporary Rights-of-Entry, approved as to form by the City Attorney, which will allow private property owners to access their properties from City properties and City controlled public rights-of-way to repair, protect and prevent further damage to their properties as a result of Storm 2006.

ADOPTED THIS ____ DAY OF _____, 2006.

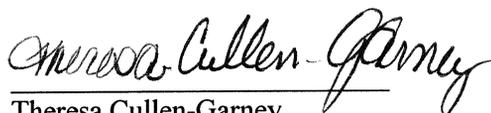
THE CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Pat Adauto
Deputy City Manager
Development and Infrastructure

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

This Temporary Right of Entry is granted on this _____ day of _____, 2006 by the CITY OF EL PASO (the "GRANTOR") to _____ (the "GRANTEE").

WHEREAS, GRANTEE has requested permission to enter onto City properties or City controlled public rights-of-way (the "City Property") to access its private property to repair, protect and prevent further damage to its property as a result of Storm 2006; and

WHEREAS, GRANTOR consents to and approves of the entry onto the City Property by GRANTEE and its contractors and subcontractors, subject to the provisions noted herein, to perform the Identified Work on the City Property,

NOW THEREFORE, KNOW ALL BY THESE PRESENTS:

That GRANTOR, for and in consideration of the fact that the City Council has found that because President George W. Bush declared a federal disaster because of Storm 2006 and it is necessary to act to prevent further damage to the property of its residents, and this is valuable consideration to the City, hereby grants a temporary right of entry upon, over, and through the City Property, described in Exhibit "A", as is necessary to perform the Identified Work, which is described in Exhibit "B". Exhibits "A" and "B" are attached hereto and incorporated herein for all purposes.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. Access to the City Property shall be granted solely to allow for the Identified Work. Except as noted herein, no construction, excavation, or change in use of the City's property is permitted through this instrument. GRANTEE shall bear all costs and expenses associated with the Identified Work contemplated herein.

All Identified Work to be performed on the City Property shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws. GRANTEE shall leave the City Property in the same condition as found, normal wear and tear excepted, unless the GRANTOR acknowledges and accepts that the City Property will be left in a different condition in the Identified Work. Further, the Identified Work to be performed shall be completed in a manner to ensure that no damage shall be done to the City Property. Should any damage occur, GRANTEE shall be fully responsible for the repair of such damage. GRANTEE may enter the City Property from any public street or right of way that abuts the City Property; provided, however, the point of entry for any particular operation shall be the one that disturbs and damages the terrain and plants within the City Property to the least extent reasonably possible under the circumstances.

2. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the property, GRANTOR does not convey any other right, title, or interest in the property herein.

3. Unless extended by written instrument signed by GRANTOR, the rights granted herein shall expire on _____.
4. **INDEMNITY PROVISION AND RELEASE.** GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DAMAGES, COSTS, AND EXPENSES, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION OF GRANTEE'S ACTIVITIES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.
5. GRANTEE and its identified representatives shall coordinate the Identified Work with the Deputy City Manager, Development & Infrastructures, in advance, so as to minimize any potential interference with the performance of GRANTOR's use of the property. GRANTEE expressly agrees that the City Property is located within an operating City and such operations are not to be disrupted by any permission granted by this instrument. The City reserves the right to terminate this Temporary Right of Entry at any time.
6. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the Identified Work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
7. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.
8. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any encroachments, use not specified herein, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of performing the Identified Work as noted in Exhibit "A." The Parties expressly understand and agree that the granting of any related easement, special privilege, or other such rights shall require the execution of additional instruments and/or proper legal actions.

EXECUTED THIS _____ DAY OF _____, 200__.

GRANTOR:
CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

