

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

DEPARTMENT: City Development

AGENDA DATE: October 1, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-541-4583

DISTRICT(S) AFFECTED: 8

SUBJECT:

AUTHORIZE the City Manager to sign a Temporary Right of Entry to a City land parcel at 4160 Doniphan Drive to be used by the Rotary Club as overflow parking for a Wild West Wine Fest at Keystone Park.

BACKGROUND / DISCUSSION:

The Rotary Club of El Paso is hosting a wine festival at Keystone Park October 5, 2013 from noon till 5:00 pm, and the need for overflow parking is anticipated. In exchange for use of the parcel, The Rotary Club is offering to clean-up a parcel of raw land owned by the City adjacent to the Keystone Park. The benefit to the City is to receive In-Kind services of general clean-up to the vacant parcel. The access to the site will be granted from 9:00 am until 8:00 pm to allow plenty of time for clean-up. The Rotary Club will provide the appropriate types of insurance and add the City as additionally insured in those policies. The Rotary Club will be granted the right to setup temporary signage, but no permanent signage will be installed. The Rotary Club will also be responsible for having appropriate people directing traffic and security.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? No.

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?

No financial impact.

BOARD / COMMISSION ACTION:

Enter appropriate comments or 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 a Right of Entry between the CITY OF EL PASO and ROTARY OF EL PASO for the use of the property commonly known as 4160 Doniphan Drive, El Paso, Texas more particularly described as a portion of Lot 26, Block 3, Keystone Business Park, which is depicted in the map attached hereto as **ATTACHMENT 1**, from the hours of 9:00 a.m. to 8:00 p.m. on October 5, 2013 for overflow parking for the Wild West Wine Fest. The rent will be \$225.00, payable in in-kind services from the Grantee.

ADOPTED this _____ day of _____, 2013.

CITY OF EL PASO

ATTEST:

Oscar Leeser
Mayor

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Director
City Development Department

ATTACHMENT 1
PROPERTY SITE MAP



THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

This Temporary Right of Entry is granted on this ____ day of _____, 2013, by the CITY OF EL PASO ("GRANTOR") to Rotary Club of El Paso ("GRANTEE").

WHEREAS, GRANTOR owns and controls approximately 1.81 acres at 4160 Doniphan Drive in the City of El Paso, Texas ("City Property"); and

WHEREAS, GRANTEE has requested access to City Property for overflow parking (the Permitted Use") for the Wild West Wine Fest event GRANTEE is sponsoring in nearby Keystone Botanical Gardens on October 5, 2013 from 12 noon to 5:00 p.m. (the "Event"); and

WHEREAS, GRANTOR consents to and approves of the entry onto the City Property by GRANTEE and its agents, volunteers and invitees, subject to the provisions noted herein, for the Permitted Use on the terms and conditions set forth herein.

NOW THEREFORE, KNOW ALL BY THESE PRESENTS:

That GRANTOR, as the lawful owner or the lawful owner with control of the City Property described as A portion of Lot 26, Block 3, Keystone Business Park, which is depicted in the map attached hereto as ATTACHMENT 1, which is attached hereto and incorporated herein for all purposes, for and in consideration of the sum set forth herein, the receipt and sufficiency of which is hereby acknowledged, paid by GRANTEE, hereby grants a temporary right of entry upon, over, and through the City Property described in ATTACHMENT 1 as necessary for the Permitted Use.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. Access to the City Property shall be granted solely to allow GRANTEE to use the City Property as overflow parking for its Event and to perform the related In-Kind Services described herein. GRANTEE may utilize the City Property only from the hours of 9:00 a.m. to 8:00 p.m. on the date of the Event ("Permitted Use Period") in conjunction with the proposed Event, including allowing free parking for the vehicles of its agents, on the City Property and performing the In-Kind Services as further set forth in Section 4 herein. GRANTEE may place temporary directional signs at the City Property for the day of the Event, but no permanent structures or signs will be permitted on the City Property.

No construction or excavation is permitted through this instrument. GRANTEE shall bear all costs and expenses associated with the Permitted Use and In-Kind Services contemplated herein. All related services to be performed on the City Property shall be completed in a good, workmanlike manner.

After the Event and the related use and services under this instrument is completed, GRANTEE shall restore the City Property to substantially the same condition as found prior to commencement of said work, normal wear and tear and In-Kind Services excepted, and shall immediately remove any equipment or vehicles from the City Property. Further, all use and related services 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.

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 City Property herein.
3. Unless extended by written instrument signed by GRANTOR, the rights granted herein shall expire on October 5, 2013, without regard to whether the referenced related use and services has begun or been completed.
4. **CONSIDERATION.** The rental fee for the Permitted Use shall be TWO HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$225.00). In lieu of cash payment for the use of the City Property, the GRANTOR and GRANTEE agree that GRANTEE will provide a minimum of 15 person hours during the Permitted Use Period to remove and dispose of any weeds and vegetation (excluding any trees, bushes or permanent landscaping vegetation), litter, garbage or refuse from the City Property (the "In-Kind Services") as well as any litter, garbage or refuse that may result from the Permitted Use and the Event. The parties agree that the value of such services is approximately \$14 per person hour and such in-lieu payment is adequate consideration for the GRANTEE's temporary Permitted Use of the City Property.
5. **INSURANCE.** GRANTEE agrees to provide the following insurance:

GRANTEE shall provide comprehensive general liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per person, and One Million and No/100 Dollars (\$1,000,000.00) 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 Million and No/100 Dollars (\$1,000,000.00) for property damage growing out of any one accident or other cause.

GRANTEE shall name the City as an additional insured on the policy of general liability and garage keepers insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the GRANTEE, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement. GRANTEE 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 or the GRANTEE, its officers, agents, servants or employees.

This Temporary Right of Entry shall not be executed by the City until the GRANTEE submits a copy of the policy or certificate of liability insurance showing proof of the required insurance to the City Development Director, to be approved by the City Attorney. 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. Failure to keep the policy in full force and effect throughout the term of the Temporary Right of Entry shall be grounds for cancellation of this Temporary Right of Entry.

5. **GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT 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, VOLUNTEERS, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. 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**
6. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.
7. 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 underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
8. 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.
9. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any real property interest, use in the City Property, or other right

shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of conducting a geotechnical exploration of the City Property's subsurface, a site and infrastructure evaluation, and an environmental assessment of the City Property. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.

10. All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

GRANTOR: CITY OF EL PASO
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

GRANTEE: Rotary of El Paso
Attn: Mike Hackett
200 S Alto Mesa Dr
El Paso, Texas 79912

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

12. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

(Signatures follow on next page)

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

Signature Page

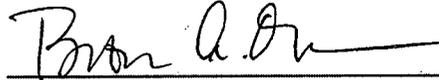
EXECUTED THIS _____ DAY OF _____, 2013.

GRANTOR:

CITY OF EL PASO, TEXAS

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Berrtha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Director
City Development Department

GRANTEE:

ROTARY OF EL PASO



Mike Hackett
President

(Acknowledgments follow on next page)

ATTACHMENT 1
PROPERTY SITE MAP





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON COMPANIES, LLC - K CHICAGO 525 W. Monroe, Suite 600 CHICAGO, IL 60661 (312) 669-6900	CONTACT NAME: Lockton Companies, LLC
	PHONE (A/C, No, Ext): 1-800-921-3172 FAX (A/C, No): 1-312-681-6769
	E-MAIL ADDRESS: Rotary@lockton.com
	INSURER(S) AFFORDING COVERAGE
INSURED All Active US Rotary Clubs & Districts Attn: Risk Management Division 1560 Sherman Ave. Evanston, IL 60201-3698	INSURER A: ACE American Insurance Company INSURER B: ACE Property & Casualty Insurance Co INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

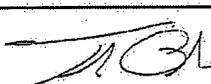
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability Included GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	N	PMI G23861355 005	7/1/2013	7/1/2014	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO: ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	N	PMI G23861355 005	7/1/2013	7/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA-LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED. RETENTION S	N	M00534092 005	7/1/2013	7/1/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	NOT APPLICABLE			WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The Certificate Holder is included as Additional Insured where required by written and signed contract or permit subject to the terms and conditions of the General Liability policy, but only to the extent bodily injury or property damage is caused in whole or in part by the acts or omissions of the insured.

CERTIFICATE HOLDER**CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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