

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement by and between the City of El Paso and the El Paso Center for Mental Health and Mental Retardation Services for the expenditure of District 3 discretionary funds in the amount of \$269.97 to pay towards the costs of the application and police traffic services in conjunction with a parade permit to be issued to MHMR for their parade to be held on October 16, 2008.

Dated this 14th day of October 2008.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

APPROVED AS TO FORM:

Richarda Duffy Momsen
City Clerk



Elaine S. Hengen
Senior Assistant City Attorney

CITY CLERK DEPT.

~~STATE OF TEXAS~~)
)
COUNTY OF EL PASO)

INTERLOCAL GOVERNMENT AGREEMENT

THIS AGREEMENT is entered into by and between the **CITY OF EL PASO**, ("CITY"), and **EL PASO CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES** ("MHMR").

WHEREAS, Pursuant to Texas Health & Safety Code, §534.019, the CITY, as a local agency, may contribute land, buildings facilities, other real and personal property to administer the MHMR programs and services and MHMR is such entity for which the City may provide funding; and

WHEREAS, the City, El Paso County and the El Paso County Hospital District entered into an agreement to create MHMR, dated on or about November 28, 2000, under which, each of the three entities provide a specified level of support to MHMR either through funding or the provision of in-kind services 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, Texas Government Code, Chapter 791 authorizes local governments of the state to enter into contracts relating to governmental functions.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. SCOPE This Agreement provides for certain funding and in-kind services in connection with an application for a parade permit for a parade/march ("Event") to be conducted solely by MHMR on October 16, 2008. The performance of this contract shall be pursuant to the time periods noted in any parade permit that may be issued by the City. Time if of the essence.

2. CONSIDERATION.

2.1 The City shall pay from the discretionary funds account for the District #3 Representative, the sum of \$269.97, which is allocated to the below costs of the Event:

- A. Application costs of \$126.00.
- B. The amount of \$143.97 to be used towards the payment of the police traffic control services for the Event.

2.2 The City shall provide the following in-kind services for the Event, which shall be credited to the City pursuant to paragraph 2.3 of this agreement:

- A. Police traffic control/public safety in-kind services consisting of the costs that are not paid by the applicant in accordance with Section 13.36.050 A of

the El Paso City Code, which at the time this contract is entered into are estimated to be \$548.88.

2.3 MHMR acknowledges that the funding provided under this Agreement is appropriately provided is for authorized MHMR programs and services. In addition, MHMR agrees that the total amount of funds that the City expends and in-kind services provided in conjunction with the Event, include costs that are not billed to MHMR, will be credited as the City's contribution for purposes of the November 28, 2000 Interlocal Agreement among the City, the County of El Paso and the El Paso County Hospital District. The parties agree that the City shall determine the actual costs after the conduct of the Event and provide notice to MHMR of those actual costs and the amounts that are to be credited to the City under this provision.

3. MHMR'S RESPONSIBILITIES.

3.1 MHMR shall be solely responsible for the conduct of the Event, and the City is not a sponsor or co-sponsor of the Event, but rather, provides funding to MHMR pursuant to the statutory authorization in Section 523.019, Texas Health and Safety Code. MHMR shall obtain the permit for the Event as required by Chapter 13.36 of the City Code, and shall be solely responsible to conduct the Event in the manner permitted by state law and city code.

3.2 MHMR shall pay the amounts invoiced by the City within thirty (30) days of receipt of such invoice(s) for the costs of the Event that are not covered by this Agreement, to include but not be limited to additionally costs for police traffic control services, street cleaning services if any, and park user fees/charges if any.

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. MHMR 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 provision of funding under this Agreement shall not be construed as the City's co-sponsorship of the Event nor as support or opposition to any issue by the City.

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 MHMR while MHMR is promoting, conducting, or operating the Event, or which are caused by or arise from the failure of MHMR to abide by appropriate laws, rules and regulations.

5. **EQUIPMENT.** MHMR shall maintain in working condition satisfactory to the City all equipment that the City permits MHMR to use in the Event. MHMR 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 to any person.

6. **SAFETY.** MHMR 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. MHMR shall exercise every precaution for the safety of public and private property and any person.

7. **DISCRIMINATION.** MHMR, 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.

8. **ACCESSIBILITY STANDARDS FOR DISABLED PERSONS.** MHMR agrees, that in the performance of this Contract, it will comply with the Americans with Disabilities Act. MHMR must file any Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

9. **COMPLIANCE WITH LAWS.** MHMR 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.

10. **TERMINATION.**

10.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

10.2 Time of Performance Termination – Force Majeure. No party to this Agreement will be liable for failure to comply with any term of this Agreement 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 Agreement 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.

10.3 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 Agreement .

10.3.1 Upon termination of this Contract, except as otherwise provided herein, all duties and obligations of the parties to this Contract shall cease.

11. **AMENDMENTS AND WAIVER.** The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City and MHMR. No claim or right arising out of a breach of this MHMR 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.

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12. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. 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 Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

13. **GOVERNING LAW.** This Agreement 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.

14. **SEVERABILITY.** Every provision of this Agreement 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.

15. **NOTICES.** All notices and communications under this Agreement 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

MHMR: El Paso Center for MHMR
Attn: Gary Larcenaire
1600 Montana Ave.
El Paso, Texas 79902

16. **WARRANTY OF CAPACITY TO EXECUTE CONTRACT.** The people signing this Agreement 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 Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Entered into this _____ day of October 2008.

(Signatures on following page)

CITY CLERK DEPT.

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Signature Page

EL PASO CENTER FOR MHMR SERVICES

Gary Larcenaire

Title: _____

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Elaine S. Hengen
Senior Assistant City Attorney