

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

**DEPARTMENT:** Financial Services Department

**AGENDA DATE:** November 29, 2011

**CONTACT PERSON NAME AND PHONE NUMBER:** Carmen Arrieta-Candelaria 915-541-4293

**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

THAT the City Manager is authorized to sign a Star Lighting Agreement by and between the City and the Autism Community Network of El Paso for the lighting of the Star on the Mountain during the month of April, 2012 for which the Autism Community Network of El Paso will pay an amount not to exceed \$12,100.00.

**BACKGROUND / DISCUSSION:**

The Autism Community Network of El Paso ("the Network") approached the City of El Paso with a plan to turn the Star on the Mountain "blue" during the month of April 2012 to bring awareness of autism in and to the El Paso Community. The Network is a nonprofit organization dedicated to educating, advocating and promoting tolerance for those affected by Autism. During the month of April 2012 the Network is proposing to turn the Franklin Star Blue. April is Autism awareness month and Blue is the color most associated to Autism. The Franklin Star is an El Paso landmark visible within a thirty mile radius. By turning the Star blue the Network plans to bring awareness of Autism and bring the subject to the forefront in El Paso. Autism awareness is needed in El Paso and surrounding areas such as Lower Valley, Horizon and Canutillo. The families and children in Juarez will also receive awareness benefit.

The mission of the Network is "It is the Mission of the Autism Community Network of El Paso to outreach to families affected by Autism in order to support, educate and advocate in their best interests and to communicate tolerance so that autistic children and their families have opportunities to thrive and succeed in their homes and in the community".

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

Council passed a proclamation in 2010 to turn the Star Orange in commemoration of Tim Floyd, the UTEP basketball coach.

**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?

The Network will pay for the costs to light the star blue. There will be no cost borne by the City.

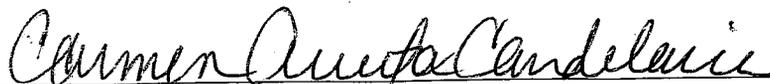
**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



**RESOLUTION**

**WHEREAS**, the City owns the Star on the Mountain ("Star"), which is located on the south side of the Franklin Mountains in El Paso, Texas on property leased by the City from 88 Investments, Inc.; and

**WHEREAS**, the City has contracted with the El Paso Chamber of Commerce to operate a program for the lighting, operating and maintenance of the Star on the Mountain, including a commemorative and donation component that allows the Star to be lit every evening; and

**WHEREAS**, the Autism Community Network of El Paso has requested the City's approval to have the Star lit with blue light bulbs during the month of April 2012 to educate, advocate and promote tolerance for those affected by Autism; and

**WHEREAS**, the City is willing to agree to lighting the Star blue by the Autism Community Network of El Paso in April 2012 pursuant to the terms stated in the Agreement.

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

THAT the City Manager is authorized to sign a Star Lighting Agreement by and between the City and the Autism Community Network of El Paso for the lighting of the Star on the Mountain during the month of April, 2012 for which the Autism Community Network of El Paso will pay an amount not to exceed \$12,100.00.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

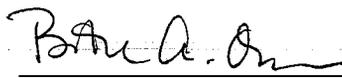
CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Carmen Arrieta Candelaria  
Chief Financial Officer

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )        **STAR LIGHTING AGREEMENT WITH  
AUTISM COMMUNITY NETWORK OF EL PASO**

This Agreement ("Agreement") is made by and between the **CITY OF EL PASO** ("City") and **AUTISM COMMUNITY NETWORK OF EL PASO**, a Texas non-profit organization ("Autism Network") as of the \_\_\_\_ day of November, 2011.

**WHEREAS**, the City owns the Star on the Mountain ("Star"), which is located on the south side of the Franklin Mountains in El Paso, Texas on property leased by the City from 88 Investments, Inc.; and

**WHEREAS**, the City has contracted with the El Paso Chamber of Commerce to operate a program for the lighting, operating and maintenance of the Star on the Mountain, including a commemorative and donation component that allows the Star to be lit every evening (all such activities hereinafter referred to as the "Program"); and

**WHEREAS**, the Autism Network has requested the City's approval to have the Star lit with blue light bulbs during the month of April 2012 to educate, advocate and promote tolerance for those affected by Autism.

**WHEREAS**, the City is willing to agree to lighting the Star blue by the Autism Network in April 2012 pursuant to the terms stated in this Agreement.

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

1. *City Responsibility.* The City (through its contract with the El Paso Chamber of Commerce) is responsible for the management, maintenance and operation services relating to the Star. The City agrees that it will install, maintain, repair and replace blue light bulbs on the Star and nightly light the Star commencing April 1 and ending April 30, 2012 for the benefit of the Autism Network and then restore the Star with regular white light bulbs on or about May 1, 2012. The City will provide the publicity and acknowledgement generally provided for any participants in the Star Program.
2. *Autism Network Responsibility.* The Autism Network will at its sole cost and expense purchase and deliver to the City, or at the direction of the City, to a specific company or location, the blue light bulbs on or before March 15, 2012 that meet the specifications set forth in **Exhibit A**.
3. *Consideration.* In consideration of the services to be performed by the City, the Autism Network agrees to pay to the costs associated with the lighting of the Star with blue light bulbs during April, 2012 for an amount not to exceed Twelve Thousand One Hundred and no/100 Dollars (\$12,100.00) ("Estimated Fee"). The Estimated Fee has been calculated by aggregating (a) a lump sum of One Thousand Five Hundred and no/100 Dollars (\$1,500) for the lighting of

the Star ("Lighting Fee"); (b) the costs of the City's administrative time ("Administrative Fee), in an amount estimated to be Six Hundred and no/100 Dollars (\$600); and (c) the costs to install, maintain, repair and replace the blue light bulbs ("Operating and Maintenance Fee") in an amount estimated to be Ten Thousand and no/100 Dollars (\$10,000). The Autism Network will make an initial deposit of \$9,600 no later than March 1, 2012 ("Initial Deposit"). Check shall be made payable to the El Paso Chamber of Commerce – Star on the Mountain and shall be delivered to the El Paso Chamber of Commerce, 1 Civic Center Plaza, El Paso, Texas 79901.

On or before May 31, 2012, the City will prepare a reconciliation of the total actual costs to light the Star blue during the month of April 2012 and add the Lighting Fee, and the Administrative Fee. This total amount will be compared to the Initial Deposit of \$9,600 and any difference up to the Estimated Fee of \$12,100, will be billed to the Autism network, or in the case of a refund being due to the Autism Network, will be remitted promptly. Either party has up to thirty (30) days to remit the amount due.

4. *Term.* The term of this Agreement shall commence on the November 15, 2011 and expire on June 30, 2012, unless sooner terminated pursuant to the terms of this Agreement.

5. **INDEMNIFICATION OF THE CITY.** BY ACCEPTANCE OF THIS AGREEMENT, THE AUTISM NETWORK AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, THEIR DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, FROM ANY AND ALL CLAIMS FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY (INCLUDING DEATH) ALLEGED TO HAVE BEEN RECEIVED OR SUFFERED AS A RESULT OF OR ARISING OUT OF THE OPERATIONS OF THE AUTISM NETWORK OR ITS AGENTS, EMPLOYEES AND CONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT.

6. *Termination.* Either party may terminate this Agreement without cause after ten (10) days written notice to the other party of the intention to terminate this Agreement, or at any time by mutual agreement of the parties. Should the City have cause to terminate this Agreement or if the Autism Network is in breach of this Agreement, the Agreement may be terminated immediately upon written notification to the Autism Network of the cause for termination.

Following any termination of this Agreement prior to the commencement of the lighting of the Star, in the event any payment has been made by the Autism Network, the City will promptly refund the Initial Deposit less any actual costs incurred.

7. *No Entry.* This Agreement does not grant or permit the Autism Network any right to enter or access the Star or the property on which the Star is located for any reason during the Term of this Agreement. Such entry shall be permitted only upon the express written approval of the City's authorized representative.

8. *General Provisions.*

A. *Successors and Assigns.* This Agreement, or any interest therein, is not assignable without the prior written consent of the City Council and the Autism Network. All provisions of

this Agreement shall extend to, bind and inure to the benefit not only of the City and the Autism Network, but also their legal representatives, successors and assigns.

B. *Notices.* All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City:	City of El Paso City Manager 2 Civic Center Plaza El Paso, Texas 79901	copy to:	City of El Paso Financial Services 2 Civic Center Plaza El Paso, Texas 79901
Autism Network:	Autism Community Network of El Paso Attention: David Taylor P.O. Box 803 El Paso, Texas 79945		

or to such other addresses as the parties may designate to each other in writing from time to time.

C. *Governing Law.* The laws of the State of Texas shall govern the validity, performance, interpretation, and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

D. *Entire Agreement.* This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

E. *Severability.* In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect the remainder of this Agreement, provided that the invalidity of such covenant, condition, or provision does not materially prejudice either the City or the Autism Network in the respective rights and obligations contained in the valid covenants, conditions, or provision of this Agreement.

F. *Authorization to Enter Agreement.* The individual signing this Agreement on behalf of the Autism Network acknowledges that he or she is authorized to do so and said individual further warrants that he or she is authorized to commit and bind the Autism Network to the terms and conditions of this Agreement.

G. *Paragraph Headings.* The paragraph headings contained herein are for convenience in reference and are not intended to specifically define or limit the scope of any provision of this Agreement.

H. *Survival of Certain Provisions.* All provisions of this Agreement, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or

termination of this Agreement hereunder, shall survive such cessation, expiration or termination of this Agreement.

*(Signature Page to follow)*

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**STAR LIGHTING AGREEMENT WITH  
AUTISM COMMUNITY NETWORK OF EL PASO**

*Signature Page*

IN WITNESS WHEREOF, the parties have hereunto agreed on the date first noted above.

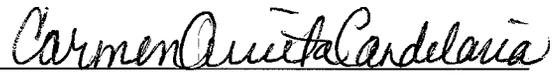
**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

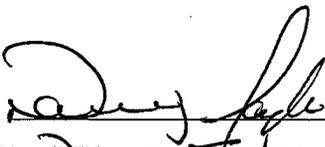
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Carmen Arrieta-Candelaria  
Chief Financial Officer

**AUTISM COMMUNITY NETWORK  
OF EL PASO**

By:   
\_\_\_\_\_  
Name: DAVID TAYLOR  
Title: EXECUTIVE DIRECTOR

**EXHIBIT A**

**SPECIFICATIONS FOR LIGHT BULBS**

**60 Watt – Blue Ceramic Coated – 130 Volt**