

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 **Sun Bowl Association**, a Texas Nonprofit corporation, hereinafter referred to as "Contractor."

WHEREAS, Contractor has hired staff to produce the **Sun Bowl Parade, Sun Bowl Fan Fiesta, and the Sun Bowl Football Game**, hereinafter referred to as "Events" in the best possible manner; and

WHEREAS, the Events serve a public purpose through the promotion of the City of El Paso through tourism and national television coverage; and

WHEREAS, the City Council believes this Contract will provide direct benefits to the City and its citizens by promoting tourism and providing economic development opportunities for the benefit of taxpayers, and will serve as a rallying point for community spirit and support; and

WHEREAS, because the City Council finds that participation by the City in the Event provides direct benefits and constitutes an important public purpose to the City and its citizens, the City is willing to provide the services set forth in this Contract;

NOW, THEREFORE, for the consideration set forth in this Contract, the parties agree as follows:

1. CONTRACTUAL RELATIONSHIP

1.1 The City hereby agrees to provide funding to Contractor and Contractor agrees to provide the services outlined herein.

1.2 The Contractor is an independent contractor. Except as may be expressly and unambiguously provided in this Contract, no partnership or joint venture is intended to be created by this Contract, no any principal-agent or employee-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.2.1 As an independent contractor, Contractor understands and agrees to be responsible for its acts and omissions, and the City shall in no way be responsible as an employer to the Contractor or to the Contractor's officers, employees, agents, representatives or subcontractors who perform any service in connection with this Contract.

1.3 The Contractor shall not receive any compensation or benefits from the City, other than as expressly set forth in this Contract.

1.4 The Contractor understands and expressly agrees that, in all things relating to this Contract, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the City enters into this Contract as a governmental entity for the purpose of performing a governmental function.

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1.5 The Contractor understands and expressly agrees that the City shall not be obligated or liable hereunder to any person other than Contractor, other than as expressly set forth in this Contract.

2. SCOPE OF SERVICES

2.1 The Contractor agrees to hold the following Events:

2.1.1 Manage and operate the Sun Bowl Parade (hereinafter referred to as "Parade") on Thanksgiving day of each year. The route of the parade shall be described in Exhibit "A" which is attached hereto and incorporated herein as though set forth in full for all purposes (hereinafter referred to as "Parade Route").

2.1.1.1 In addition to the use of City rights-of-way, this Parade requires the temporary closure of State-owned and -operated highway, thereby imposing additional obligations on the City pursuant to 43 Texas Administrative Code, Section 22.12. Contractor hereby agrees to indemnify and assume responsibility for the requirements imposed on the City under this statute in consideration of the City's submission, on behalf of Contractor, for approval of the closure and use of State highway right-of-way. Accordingly, with the exception of the City's financial and service contributions set forth in Section 2.2, Contractor shall:

2.1.1.1.a Assume all costs for the operations associated with the Parade, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

2.1.1.1.b Submit to the City, for submission to the State, for review and approval, the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State for use of highways owned and operated by the State of Texas. The Contractor shall comply with all requirements of the State relating to a traffic control plan, which may include that a traffic control plan be signed, sealed and dated by a registered professional engineer. Pursuant to State requirements, the traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. Should the State require changes to the traffic control plan and if it is found to be inadequate, Contractor will provide City with the information necessary to bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the Parade.

2.1.1.1.c. Ensure that the appropriate law enforcement agency has reviewed the traffic control plan for the closures and that the agency has deemed them to be adequate. If the law enforcement agency fails to approve the traffic control plan, Contractor will notify the City so that law enforcement agency can contact the State for consultation no less than 10 workdays prior to the Parade.

2.1.1.1.d. Complete all revisions to the traffic control plan as requested by the State within the required timeframe. Contractor hereby agrees that any failure to comply with the traffic control plan may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation and may take any appropriate action including canceling of the Parade, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

2.1.1.1.e. Comply with the traffic control plan with regards to any closure, but in no event will Contractor initiate closure prior to 24 hours before the scheduled Parade and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Parade.

2.1.1.1.f. Prepare a traffic enforcement plan, which must be finally approved by the State. The plan must ensure that adequate enforcement personnel are utilized to prevent vehicles from stopping and parking along the main lanes of state highway right of way and otherwise prevent interference with the main lane of traffic by both vehicles and pedestrians. The plan must be reviewed by the law enforcement agency that will be providing traffic control for the Parade, and Contractor must obtain from the law enforcement agency a letter certifying that they agree with the traffic enforcement plan and will be able to meet the requirements. Such plan and letter of certification must be submitted to the City with sufficient time for review and submission to the State, but no later than 96 hours before the Parade. The state requires submission and written approval of the plan no later than 48 hour before the Parade.

2.1.1.1.g. Assure the State, through the City, that there will be appropriate passage allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the traffic control plan.

2.1.1.1.h. Avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the

State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

2.1.1.1.i. This Contract may be terminated and the Parade cancelled by City if Contractor fails to comply with any of the requirements set forth in Section 2.1.4 *et seq.*

2.1.2 Manage and operate the Sun Bowl Fan Fiesta (hereinafter referred to as "Fiesta") the night before the Sun Bowl Football Game at the El Paso Convention Center.

2.1.3 Manage and operate the Sun Bowl Football Game (hereinafter referred to as "Football Game") on New Year's Eve of each year at the Sun Bowl Football Stadium or on such alternate day as specified by contractual obligations with the National Collegiate Athletic Association (NCAA) and/or the national television company.

2.2 The Contractor agrees to provide the following in-kind services to the City:

2.2.1 Recognition of the City's funding for the Events by including the City logo in/at each of the Events and/or advertisements of the Events, with the City's prior approval of such display.

2.2.2 Permit the City to enter ten (10) exhibits in the Parade. The City shall be exempt from the insurance and indemnification requirements set forth by Contractor for other parade entries.

2.2.3 Allow the City to broadcast four (4) thirty-second City of El Paso commercials during the national telecast of the Game.

2.2.4 Allow the City to broadcast four (4) fifteen-second City of El Paso commercials on the Jumbo Tron during the Game.

2.2.5 Pursuant to Section 2.3.1 of this Contract, provide the promotional banners that will be installed on City light fixtures and utility poles along portions of Montana Avenue between Copia Street and Campbell Street, designated as the Official Sun Bowl Parade Route, to the El Paso Department of Transportation for installation.

2.2.6 Pursuant to Section 2.3.2 of this Contract, provide the promotional banners that will be installed on City light fixtures and utility poles along portions of Airway Boulevard, Airport Road, and the El Paso International Airport between Gateway Boulevard West and Convair Road, to the El Paso

Department of Transportation no later than 30 days prior to the installation date.

- 2.2.7 Inclusion of the City of El Paso logo on the bunting around the perimeter of the Sun Bowl Stadium during the Football Game.
 - 2.2.8 Provide opportunities for visual exposure for/of the City of El Paso during the Football Game, as mutually agreed by the parties to this contract.
 - 2.2.9 Provide Football Game tickets to the City for the Mayor's 100 Teens.
- 2.3 The City agrees to provide the following services to the Contractor:
- 2.3.1 Install forty-two (42) promotional banners on City light fixtures and utility poles along portions of Montana Avenue between Copia Street and Campbell Street, designated as the Official Sun Bowl Parade Route. Contractor will provide replacement banners as necessary to replace banners that are not in good condition.
 - 2.3.2 Permit the Sun Bowl Parade Logo to be placed by Contractor onto the roadway on Montana Avenue between Ange Street and Virginia Street, upon approval by the Texas Department of Transportation.
 - 2.3.3 Install seventy-nine (79) promotional banners on City light fixtures and utility poles along portions of Airway Boulevard, Airport Road and at the El Paso International Airport between Gateway Boulevard West and Convair Road promoting the Sun Bowl Football Game, no later than December 5th.
 - 2.3.4 Remove the banners described in Section 2.3.3 of this Contract no later than January 31st of each year.
 - 2.3.5 Provide necessary assistance for traffic control along the Parade Route and during the Fiesta as required by the El Paso Police Department and the Traffic Engineer.
 - 2.3.6 Provide stand-by assistance from the City Fire Department personnel and Emergency Medical Service personnel as determined to be appropriate by the City. Such personnel may inspect the floats and other exhibits in the parade and perform any other assignments as may be determined solely by the City to be appropriate.
 - 2.3.7 Allow Sun Bowl Football Game teams to submit requests for pre-game events in accordance with Section 15.08.120 (Special Privilege Licenses and Permits).
 - 2.3.8 Process applications for special privileges within City rights-of-way for Football Game teams upon request of the individual teams, related alumni and student organizations. This contract shall serve as the 30 day advance receipt of such right-of-way closure.

- 2.3.9 Perform all street, sidewalk, and other right-of-way cleaning prior to and after the Events as required by Section 13.36.080 and 15.08.120.L.5.d of the El Paso City Code.
- 2.3.10 Authorize the distribution of the percentage of rental car tax collected in accordance with Ordinance No. 013431 dated December 23, 1997.
- 2.3.11 Host the Rotary Luncheon at the El Paso Civic Center each year as mutually agreed upon by the Convention and Visitors Bureau and the Sun Bowl Association.
- 2.3.12 Host the Sun Bowl Fan Fiesta at the El Paso Convention Center the day prior to the Football Game each year.
- 2.3.13 Provide advertisement of the Events on the Convention and Visitors Bureau Marquee.

3. TERM

This contract shall be for a term of ten years from the effective date hereof, unless terminated earlier as provided herein. At the end of the term, the City shall have the unilateral option to renew this contract for additional ten year terms upon the request of the Contractor. Contractor understands, agrees and accepts that the City may require the terms, conditions and provisions of this contract be modified as a condition of the renewals.

4. CONSIDERATION

The City agrees to provide to the Contractor the services described in Section 2.3 (Scope of Services), valued in an amount of up to SIXTY-FIVE THOUSAND AND NO/100 Dollars (\$65,000.00) per year.

Contractor shall pay to the City the sum of THIRTY-FIVE THOUSAND AND NO/100 Dollars per year (\$35,000.00), which shall provide partial reimbursement to the City for the costs of the services provided by the City, as described in Section 2.3 (Scope of Services). The Contractor shall also provide to the City the services described in Section 2.2 (Scope of Services).

The reimbursement shall be adjusted each fiscal year of the contract term to reflect increases in the Consumer Price Index (CPI) for "All urban consumers, US City Average, All Items" issued by the Bureau of Labor Statistics of the United States Department of Labor.

The City shall invoice the Contractor within thirty (30) calendar days of the last Event and Contractor shall pay such amount within thirty (30) calendar days of receipt of the invoice.

5. DOCUMENTS

- 5.1 The Contractor shall provide Temporary Traffic Control Plans for each of the Events as required and deemed necessary by the Traffic Engineer and the Texas

Department of Transportation (TXDOT), in accordance with Section 12.30 (Temporary Traffic Control) of the El Paso City Code.

- 5.2 The contractor shall provide notice of any changes in dates, times or locations of any of the Events no less than sixty (60) days prior to the subject Event.

6. LEGAL RELATIONSHIP

The City of El Paso may be considered a co-sponsor of the Event only to the extent of assisting Contractor with the payment of the fees required for the necessary police traffic-control assistance. Otherwise, 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. Contractor 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 City's waiver of any or all fees for necessary police traffic-control assistance, to the extent such assistance is provided, 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 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.

7. 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.

8. 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.

9. INSURANCE AND INDEMNIFICATION PROVISIONS

9.1 **LIABILITY INSURANCE.** The Contractor shall carry comprehensive general liability insurance in the following amounts:

- \$1,000,000.00 – Per Occurrence for personal injury, death, and property damage
- \$1,000,000.00 – General Aggregate
- \$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate, if applicable

These amounts are not a limitation upon the Contractor's agreement to indemnify and hold the City harmless.

9.1.1 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.

9.1.2 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.

9.1.3 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 Department of Transportation. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed thirty (30) calendar days prior written notice to the City with ten (10) calendar days prior written notice as to non-payment of insurance policy premiums. Failure to keep the policy in full force and effect throughout the term of the contract shall be grounds for cancellation of the Parade Permit and City Sponsorship. Certificates of Insurance that state the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

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

10. 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.

11. 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.

12. COMPLIANCE WITH LAWS

Contractor 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.

13. TERMINATION

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

13.2 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 **ninety (90) 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.

13.3 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.

13.4 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 Contract.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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

WITH COPY TO: Department of Transportation
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901-1196

CONTRACTOR: Sun Bowl Association
Attn: Bernie Olivas
4150 Pinnacle Suite 100
El Paso, Texas 79902-1019

19. ASSIGNABILITY

This Contract, its rights, duties and responsibilities may not be assigned by any of the parties without the prior written consent of the City Council.

20. 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.


21. EFFECTIVE DATE. This Contract is effective as of the 22nd day of November, 2011.

WITNESS THE FOLLOWING SIGNATURES AND SEALS


THE CITY OF EL PASO

ATTEST:


Richarda Duffy-Momsen
City Clerk


Joyce Wilson
City Manager

APPROVED AS TO FORM:


Elizabeth Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:


Daryl W. Cole, Director
Department of Transportation

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 22nd day of February, 2012.

CONTRACTOR:

Bernie Olivas

Name Printed: Bernie Olivas

Title: Executive Director

ACKNOWLEDGEMENT

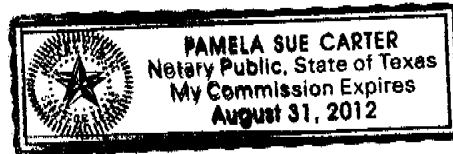
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 22 day of February, 2012, by Bernie Olivas as Executive Director, on behalf of the Sun Bowl Association.

Notary Public, State of Texas
Pamela Sue Carter

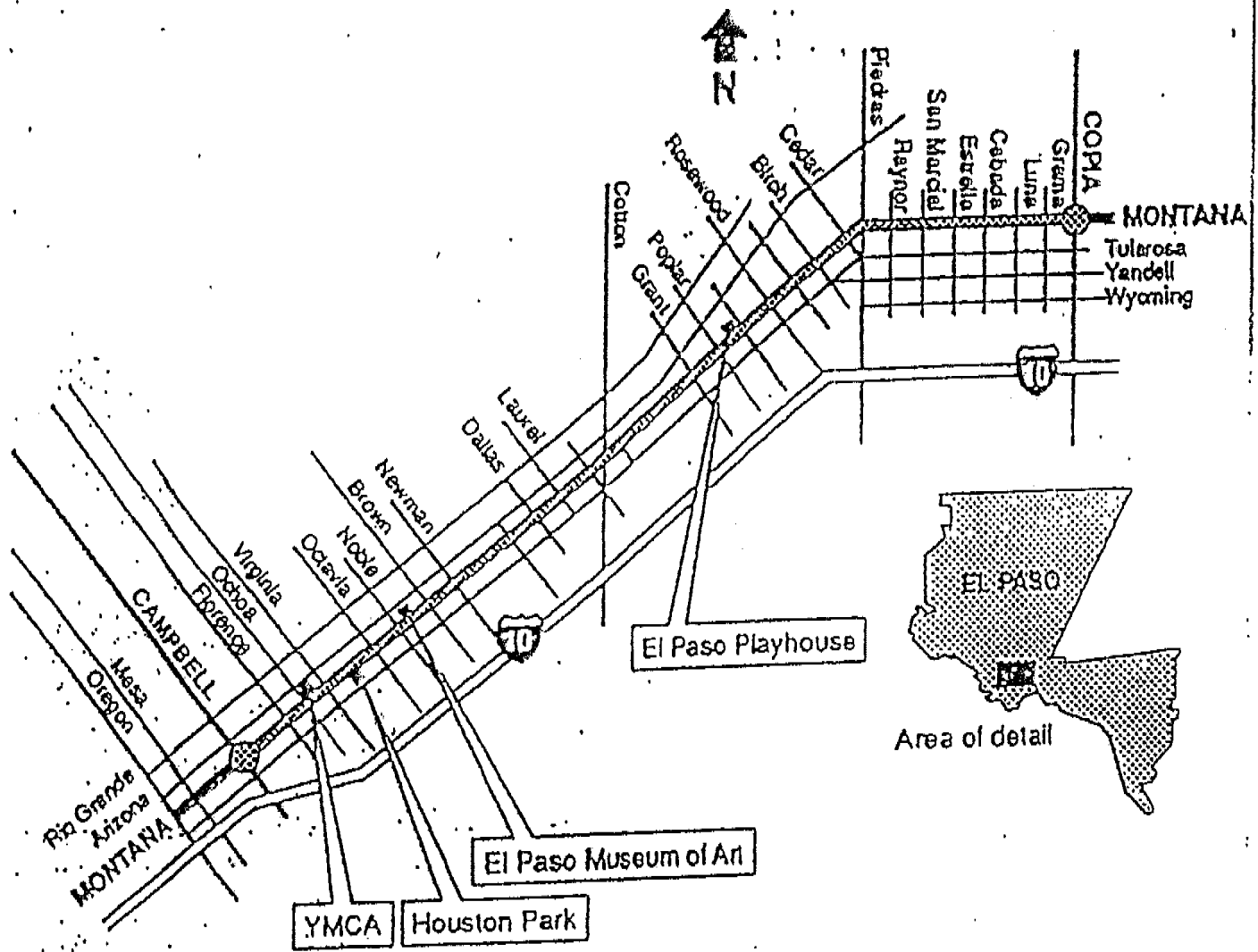
Notary's Printed or Typed Name:
8/31/12

My Commission Expires:



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EXHIBIT “A”



The Parade

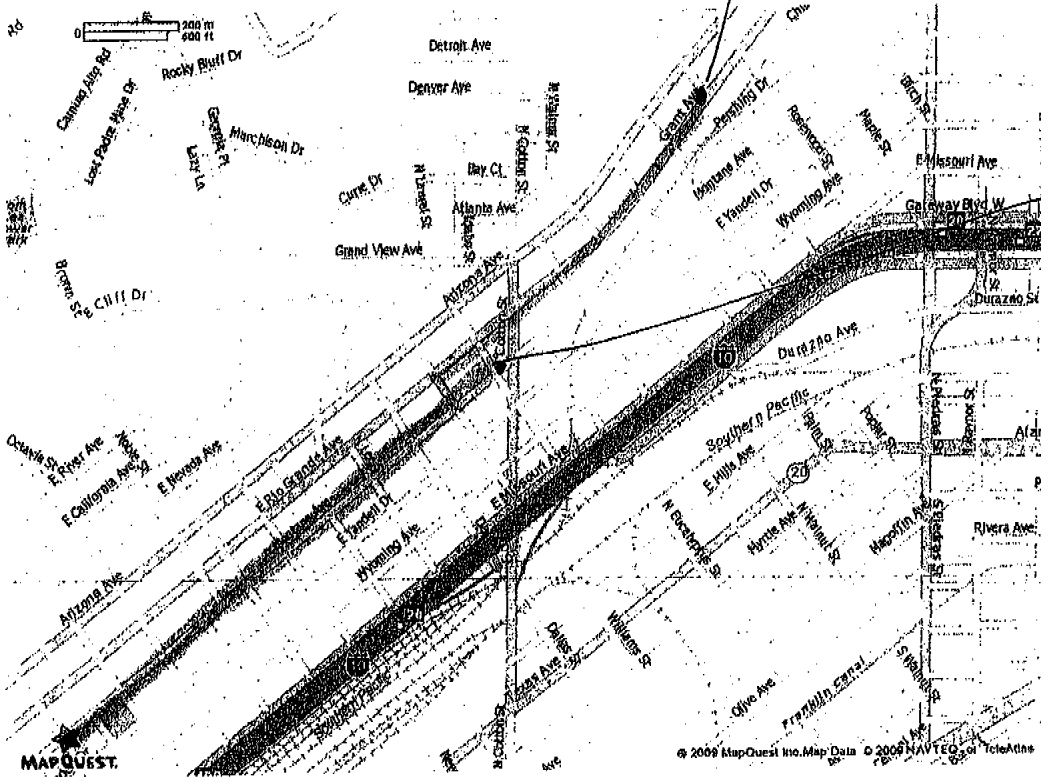
- STARTS AT Campbell and Montana at 10 a.m. and ends at Montana and Copia.
- LENGTH OF parade route is 2.7 miles.

MAPQUEST

Sorry! When printing directly from the browser your directions or map may not print correctly. For best results, try clicking the Printer-Friendly button.

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★ 808 Montana Ave Edit
El Paso, TX 79902-6318



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