

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

AGENDA DATE: September 28, 2021

PUBLIC HEARING DATE: September 28, 2021

CONTACT PERSON(S) NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-1845

DISTRICT(S) AFFECTED: 8

STRATEGIC GOAL: No. # 4 – Enhance El Paso's Quality of Life Through Recreational, Cultural and Educational Environments

SUBGOAL:

SUBJECT:

Resolution authorizing the City Manager, or designee, to sign a License and Use Agreement between the City of El Paso and the Esperanto Developments, LLC for the use of the City 1 Parking Lot known as all of Block 42, Mills Addition, municipally known and numbered as 401 East Mills and 400 East Main, City of El Paso, El Paso County, Texas for a term of 48 hours for a fee of \$3,300.

BACKGROUND / DISCUSSION:

The City of El Paso desires to enter into a License and Use Agreement between the City of El Paso and Esperanto Developments allowing Esperanto Developments, LLC to host the Festival of Chariots Event and Parade on the City 1 Parking Lot.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Building, Planning & Inspections

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Mary Lou Espinoza for Sam Rodriguez *Mary Lou Espinoza*

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager, or designee, is authorized to sign a License and use Agreement between the City of El Paso and Esperanto Developments, LLC for the use of the property known as all of Block 42, Mills Addition, municipally known and numbered as 401 East Mills and 400 East Main, City of El Paso, El Paso County, Texas for a term commencing Friday October, 1, 2021 at 5 P.M. and expiring on October 3, 2021 at 5 P.M. Mountain Time. Further, that the City Manager, or designee, be authorized to enter into amendments to the Agreement, exercise all rights and obligations under the Agreement and sign all permit applications necessary to allow the event.

ADOPTED this _____ day of _____, 2021.


THE CITY OF EL PASO:

ATTEST:

Oscar Leaser
Mayor

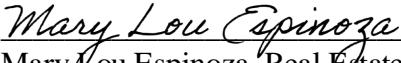
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Real Estate
Capital Improvement Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

LICENSE AND USE AGREEMENT

This License and Use Agreement (“**Agreement**”) is between the City of El Paso, a Texas Home-Rule municipality (“**City**”), and Esperanto Developments, LLC (“**Licensee**”).

WHEREAS, the City is the owner of the property commonly known as all of Block 42, Mills Addition, municipally known and numbered as 401 East Mills and 400 East Main, City of El Paso, El Paso County, Texas (the “**Premises**”); and

WHEREAS, the Licensee wishes to use the Property subject to the terms of this Agreement.

The parties agree as follows.

1. Term: Unless terminated sooner, this Agreement commences Friday October, 1, 2021 at 5 P.M. and expires on October 3, 2021 at 5 P.M. Mountain Time.
2. License Fee. No later than the Effective Date, the Licensee will pay the City a Licensee fee in the sum of \$3,300 (“**License Fee**”).
3. Premises and License. Subject to the terms of this Agreement, the City grants Licensee a non-exclusive license to use the Premises.
Except as expressly provided in this Agreement, nothing in this Agreement grants any real property interest to Licensee nor give rise to any vested right in Licensee, Licensee’s assigns or successors in interest, none of whom have a cause of action for damages upon expiration or termination of the license granted under this Agreement. Any rights granted under this Agreement end automatically and immediately upon the expiration or termination of this Agreement and no action is necessary from either party to evidence such termination of rights.
4. Use. The Licensee may only use the Premises for the following uses. No other uses are allowed on the Premises under this Agreement.
 - a. Allowed use: Festival of Chariots Event (vendors, food trucks, tents, staging & music.
5. Licensee’s Obligations. Licensee agrees to the following:
 - a. Licensee accepts the Premises in their present condition “As Is”. The City expressly disclaims any warranties as to the condition or suitability of the Premises.

- b. Licensee understands that it is the responsibility of the Licensee to obtain all necessary permits and licenses necessary to allow the Licensee to use the premises as provided in this Agreement, including any zoning permits.
- c. Licensee will not use the Premises in any manner that violates any federal, state, or local laws or regulations. Licensee will follow all federal, state, and local laws when using the Premises. Licensee will follow all occupancy limits at all times.
- d. Licensee will not modify the Premises in any manner without the advance written approval of the City Engineer.
- e. Licensee will maintain the Premises in a good and clean condition at all times during the term of this Agreement. No later than the expiration of the term, the Licensee will surrender the Premises to the City in a clean condition. If the Licensee fails to return the Premises to the City in a clean condition, then the City may perform the cleanup at the Licensee's expense and send an invoice the Licensee for the costs incurred by the City. The Licensee will pay any invoices sent to the Licensee for cleanup costs within 30 calendar days of receiving such invoice. This provision survives the term or termination of the Agreement.
- f. Licensee will follow any rules adopted by the City regarding the use of the Premises, if any.
- g. The City retains the right to enter the Premises at any time without any prior notice to inspect the Premises and ensure that the Licensee is abiding by the terms of this Agreement.
- h. Licensee will pay the costs of repairing any damage to the Premises caused by the Licensee or Licensee's employees, agents, contractors, officers, invitees, or licensees. The City will perform all repairs to any damages done to the Premises. The Licensee will pay all costs incurred by the City in the repair of any damages caused by the Licensee or Licensee's employees, agents, contractors, officers, invitees, or licensees within 30 calendar days of receiving an invoice from the City. This provision survives the term or termination of the Agreement.
- i. Licensee will not use the Premises for any purpose other than to provide the services described in this Agreement above.
- j. Licensee will not create any nuisances nor interfere with any operations of the City or other licensees on the Premises.
- k. Licensee will not create or allow any waste on the Premises.
- l. The consumption and sale of alcohol is prohibited on the Premises. The Licensee will not allow anyone to sell or consume any alcohol on the Premises.

6. Improvements: Licensee will not perform any improvements to the Premises without the advance written consent from the City. The City may deny consent to requests to improve the Premises by the Licensee.
7. Insurance.
 - a. LICENSEE will obtain Commercial General Liability Insurance in a written occurrence form including coverage at a minimum for (1) premises/operations liability, (2) broad-form property damage, (3) personal/advertising injury, (4) products and completed operations, (5) contractual liability, and (6) independent contractor liability. The minimum amounts of liability must be \$1,000,000 for bodily injury and \$1,000,000 for property damage per occurrence.
 - b. Licensee will obtain automobile liability insurance in the minimum amounts of \$1,000,000 for bodily injury and \$1,000,000 for property damage per occurrence.
 - c. LICENSEE will also obtain Workers' Compensation in accordance with statutory requirements.
 - d. Prior to using the Premises, the Licensee will provide the City with a copy of all insurance policies under this Agreement, along with a copy of the certificate of insurance, and all endorsements. The Licensee will obtain advance approval from the City's Risk Manager for any endorsements, deductibles, and/or aggregate caps that apply any insurance policy required under this Agreement.
 - e. Licensee will maintain all insurance policies required in this Agreement in effect for the duration of this Agreement.
 - f. Licensee will name the City and the City's officials, employees, agents, and contractors as additional insured.
 - g. All insurance policies under this Agreement must provide that the insurance cannot be canceled or the amount of coverage changed without 30 calendar day notice to the City, or without 10 calendar day prior written notice as to non-payment of insurance policy premiums.
 - h. All insurance policies must provide a waiver of subrogation in favor of the City.
 - i. The Risk Manager for the City of El Paso may waive, in writing, any insurance requirements described under this Section.
8. Indemnification. **Licensee will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS 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, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. 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 Licensee every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Licensee 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 Licensee 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. Licensee will pay all judgments finally establishing liability of the City in actions defended by Licensee pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Licensee, 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 Licensee's property from any cause. This provision survives the term or termination of the Agreement.

9. Release. Licensee agrees that the City is not responsible for any loss or damage to Licensee property while such property is located on the Premises. To the extent allowed by law, Licensee releases the City, the City's officers, agents, and employees from any and all claims of property damage, property loss, personal injury, and/or death even when such is caused by the negligence of the City, or the City's officers, agents, or employees during Licensee's use of the Premises. This provision survives the term or termination of this Agreement.
10. Licensee will pay promptly all costs, expenses, and other charges incidental to the use and occupation of the Premises and **to indemnify, defend, and hold the City harmless from any expenses and charges from all claims demands, and liens of whatever character arising by reason of contract, expressed or implied, or negligence, or any part of any other act or omission on the part of any person other than the City. Such costs include all expenses and attorney's fees incurred by the City in connection with any asserted claim, demand, or lien.**
11. Compliance with Laws. Licensee will:
 - a. Comply with Title VI of the Civil Rights Act of 1964 (PL 88.352), which prohibits discrimination based on race, color, or national origin in programs and activities that receive federal financial assistance.

- b. Comply with Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794), which prohibits discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.
 - c. Comply with the requirements of the Americans with Disabilities Act of 1990, PL 101-336, 101 Congress, 2nd Session, 104 Stat. 317 (July 26, 1990).
 - d. Comply with the requirements of the Texas Revised Civil Statute 44196b-4, Sections 5.03-5.04, which outlines the workplace and confidentiality guidelines regarding AIDS and HIV.
12. Termination. Either party may terminate this Agreement for any reason following a one (1) day calendar day written notification. Licensee will return the Premises to the City on the date of termination in the same condition as provided to the Premises on the Effective Date, except normal wear and tear.
13. Notices. All notices under this Agreement are deemed to be received as of the postmark date on the notice. The parties will send all notifications under this Agreement via postmarked certified mail or e-mail at the following addresses:

CITY: City of El Paso
 Attn: Mary Lou Espinoza, Real Estate Division
 P. O. Box 1890
 El Paso, TX. 79901-1890
realestate@elpasotexas.gov

COPY TO: City of El Paso
 Attn: Tomás González, City Manager
 P. O. Box 1890
 El Paso, TX. 79901-1890

LICENSEE: Esperanto Developments
 300 Main St, Suite 620
 El Paso, Texas 79901
e.sanchez@esperantodev.com

14. Governing Law and Venue. This Agreement is governed by Texas law. The venue for any disputes regarding this Agreement lies exclusively in El Paso County, Texas.
15. No Joint Enterprise. This Agreement does not create any joint enterprise between the parties.
16. Independent Parties. Nothing in this agreement creates an employer/employee relationship or allows any party to this Agreement the right to exercise control or direction over the other party.

17. No Third Party Beneficiaries. This Agreement does not confer or create any rights or obligations to any third parties.
18. No Personal Liability. This Agreement does not create any personal liability on the part of any employee, officer, or agent of the City.
19. No Assignment: Licensee will not assign this Agreement or the license granted under this Agreement without the prior express written consent of the City.
20. Governmental Function. The parties expressly agree that, in all thing relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act.
21. Headings. The paragraph or section headings contained in this Agreement are for reference purpose sonly and do not control the meaning or interpretation of this Agreement.
22. No Waiver. Failure of either party to enforce any provision of this Agreement does not constitute a waiver of rights.
23. Severability. If any provision of this Agreement is declared unenforceable, then all other provision of this Agreement will remain in effect.
24. Attachments. All attachments referenced in this Agreement are incorporated in full to this Agreement by reference.
25. The person signing this Agreement on behalf of Licensee represents and warrants that such person has authority to enter into this Agreement on behalf of Licensee.
26. Definitions. For purposes of this Agreement, all defined terms appear in **boldface print** when first defined.
27. Complete Agreement. This Agreement constitutes the entire agreement between the parties.


CITY OF EL PASO

Tommy González

City Manager

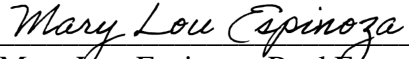
Date Signed: _____

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Real Estate
Capital Improvement Department

(Acknowledgement)

STATE OF TEXAS)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the ____ day of _____, 2021,
by TOMAS GONZALEZ, as City Manager of the City of El Paso, a municipal corporation, on
behalf of said corporation.

Notary's Commission Expires:

Notary Public, State of Texas

Notary's Name (printed)

(Licensee's Signature on following page)

LICENSEE:

Name: _____
Title: _____

(Acknowledgement)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the _____ day of _____, 2021,
by _____, as _____ of the _____,
on behalf of _____.

Notary Public, State of Texas

Notary's Commission Expires:

Notary's Name (printed)
