

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

**DEPARTMENT:** Parks and Recreation

**AGENDA DATE:** January 23, 2018

**CONTACT PERSON/PHONE:** Tracy Novak, Director (212-1708)

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL:**

Goal 4 – Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

**SUBJECT:**

Discussion and action to approve Resolution authorizing the City Manager to sign a donation agreement from the Rio Grande Cancer Foundation to provide sunscreen lotion and dispensers at El Paso City parks and recreation facilities an effort to protect young children and adults from the harmful effects of sun.

**BACKGROUND / DISCUSSION:**

The Rio Grande Cancer Foundation approached the City to provide dispensers and lotion to be placed at City of El Paso parks and recreation facilities to protect children and adults from exposure to the sun. The Foundation will provide dispensers and the City will install them, and replenish with lotion as needed. The donation of the dispenser and lotion is at no cost to the City. The impact to City operations is \$26 per site, with an estimated 50 sites, or \$1,300 annually, and absorbed into existing budget.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Department:	Parks and Recreation
Annual Estimated Amount:	\$1,300.00
Accounts:	451-51295-50100-1000-P5120
Fund Source:	General Fund

**BOARD / COMMISSION ACTION:**

N/A

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**RESOLUTION**

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

That the City of El Paso accepts, with gratitude, the donation from the Rio Grande Cancer Foundation ("RGCF"), of the following:

Sunscreen and Sunscreen Dispensers to be used in the City's Parks and Recreational Facilities.

That City Council also authorizes the City Manager to sign a Donation Agreement to provide for the installation and maintenance of the Sunscreen Dispensers, as well as any necessary documentation and agreements required for this donation.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
Dee Margo  
Mayor

\_\_\_\_\_  
Laura D. Prine  
Interim City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Tracy Novak, Director  
Parks and Recreation Department

THE STATE OF TEXAS  
COUNTY OF EL PASO

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## DONATION AGREEMENT

This Donation Agreement ("Agreement"), made this the 14 day of Dec, 2017, (hereinafter the "Effective Date") between the **CITY OF EL PASO**, a Texas home rule municipal corporation, hereinafter referred to as "City", and **RIO GRANDE CANCER FOUNDATION**, a public charity under IRS designation 501(c)(3) (hereinafter "RGCF").

**WHEREAS**, the City seeks to promote healthy outdoor recreational activity to the citizens and visitors of El Paso through the use of its City Parks; and

**WHEREAS**, the RGCF wishes to donate Sunscreen and Sunscreen Dispensers to be used in the City's Parks, as described below under RGCF's and City's Responsibilities.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, RGCF AND CITY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

### 1. Contractual Relationship:

1.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.2 As an independent contractor, RGCF understands and agrees that it will be responsible for its respective acts or omissions, and the City shall in no way be responsible as an employer to RGCF's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.3 As an independent contractor, the City understands and agrees that it will be responsible for its respective acts or omissions, and RGCF shall in no way be responsible as an employer to the City's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.4 RGCF acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation other than the obligations set forth in this Agreement. The City also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind RGCF to any obligations other than the obligations set forth in this Agreement. RGCF agrees that its personnel shall participate in the Sunscreen Initiative in compliance with all applicable federal, state, and/or local rules and regulations.

## 2. RGCF's Responsibilities:

- 2.1 Order sunscreen dispensers, poles & sunscreen from BrightGuard, LLC.  
Sunscreen and sunscreen dispensers are provided by BrightGuard, LLC under the Indemnity Agreement between Bright Guard, LLC and RGCF incorporated by reference and attached hereto as Exhibit A.
- 2.2 Provide sunscreen refills and batteries as needed for a period of 6 months
- 2.3 To provide, on loan, portable dispensers for Parks and Recreation's special events.
- 2.4 Serve as POC with BrightGuard, LLC for dispensers, poles, sunscreen and maintenance
- 2.5 To provide literature and education materials to the public on the use of the sunscreen stations and on the prevention of skin cancer.
- 2.6 Include City of El Paso as a Community Partner for the sunscreen initiative on RGCF's website

## 3. City's Responsibilities:

- 3.1 City will provide space at Park facilities for permanent and portable dispenser stations.
- 3.2 City will assist in helping to determine ideal locations for the stations.
- 3.3 Issue all necessary permitting & approvals
- 3.4 Provide installation approval
- 3.5 Provide POC for each location to RGCF
- 3.6 Install permanent poles & dispensers
- 3.7 Check daily for sunscreen & maintenance
- 3.8 City POC contacts POC at RGCF for any needs
- 3.9 In case of vandalism, City removes dispenser and notifies POC at RGCF
- 3.10 The landing page of the Parks & Recreation Department includes RGCF logo and link as a Community Partner

4. **Amendment of Agreement:** No amendment to this Agreement shall be effective unless reduced to writing, executed by the authorized representatives of the City and RGCF. The City Manager for the City of El Paso or a designee is authorized to enter into amendments to this Agreement that do not affect the City Budget.

5. **Notices:** All notices under this Agreement shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested. Such notices shall be deemed given when received by such party's designated representative.

DONOR:

Rio Grande Cancer Foundation  
616 W Virginia Ave D  
El Paso TX 79902  
Attn: Patty Siscareno

CITY:

City of El Paso  
Attn.: City Manager

P.O. Box 1890  
El Paso, Texas 79950-1890

COPY TO: City of El Paso  
Attn.: Park and Recreation Director  
P.O. Box 1890  
El Paso, Texas 79950-1890

**6. Assignment.** This Agreement is not assignable in whole or in part by any party hereto without prior written consent of the other party.

**7. Force Majeure.** This agreement may be terminated by either party due to acts of God, war, government regulations, disaster, strikes (save and except strikes involving employees of the party seeking the protections of this provision), civil disorder, curtailment of transportation facilities, or other emergencies making it illegal or impossible to perform obligations under this agreement. In order to terminate this agreement under this provision for any one or more of such reasons, the terminating party must provide written notice to the other party within five (5) days of the occurrence of any of these events. In the event that services are suspended for a time period not to exceed thirty (30) days because of an act of nature, act of God or other force majeure event, beyond the reasonable control of a party, either party may terminate this Agreement immediately without cause or penalty and any monies paid for such services in advance shall be refunded immediately.

**8. Term and Effective Date:** This Agreement shall be effective for 12 mos from the date and year first entered above ("Term").

## **9. Termination**

**9.1 Termination - Cause.** The parties agree that either party may terminate this Agreement in whole or in part. Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of thirty (30) calendar days to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

**9.2 Termination - Convenience.** Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

**9.3 Termination Shall Not Be Construed as Release.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

9.4 Except as otherwise provided herein, all duties and obligations of the City and RGCF shall cease upon termination or expiration of this Agreement.

## **10. Insurance and Indemnification**

10.1 As a condition of this Agreement, RGCF or its insurer shall INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE,) INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT 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 REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City shall promptly forward to RGCF every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. RGCF shall 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 RGCF 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. RGCF shall pay all judgments in actions defended by RGCF pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election shall have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City shall not be responsible for any loss of or damage to RGCF's property from any cause.

11. **Consideration.** RGCF agrees to perform the services for no monetary compensation and that the opportunity to provide the donation constitutes full and complete consideration.

12. **Governmental Function.** The parties expressly agree that, in all things relating to this Agreement, the City enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

**13. Governing Law.** This Agreement shall be governed by and construed in accordance with the State of Texas, along with applicable provisions of the federal law, the El Paso City Code, and any Ordinance of the City.

**14. Entire Agreement.** This agreement contains the entire understanding between the parties and supersedes any and all prior agreements, arrangements, communications, or representations, whether oral or written concerning the same subject matter. This Agreement may not be amended, altered, modified or changed except in writing, signed by both parties.

**15. Severability.** In the event any one or more of the provisions of the Agreement shall be held by a tribunal of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision. If any provision of this Agreement is held to be excessively broad as to duration, geographical scope, activity or subject, it is to be construed by limiting and reducing it, so as to be enforceable to the extent compatible with applicable law.

**16. Headings.** The headings of sections and subsections of this Agreement are for reference only and shall not alter the terms and conditions of this Agreement.

**17. Authorization to Enter into Agreement.** The Parties warrant and represent that they have full authority to enter into this Agreement and to consummate the transactions contemplated hereby and that this Agreement is not in conflict with any other agreement to which the Parties are a party or by which they may be bound.

***(SIGNATURES ON FOLLOWING PAGE)***

**CITY OF EL PASO:**

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Tomás González  
City Manager

**APPROVED AS TO FORM:**



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Leslie B. Jean-Pierre  
Assistant City Attorney


**APPROVED AS TO CONTENT:**



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Tracy Novak, Director  
Parks and Recreation Department

**DONOR:** Rio Grande Cancer Foundation



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Executive Director