

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

CITY CLERK DEPT.
10 FEB -4 PM 1:14

DEPARTMENT: Sun Metro
AGENDA DATE: February 9, 2010
CONTACT PERSON/PHONE: Lynly Leeper, Assistant Director for Development (915) 534-5822
DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a License Agreement by and between the CITY OF EL PASO, and UNION VALET LLC for the use of City owned property known as Union Depot Parking Lot #4 and managed by the City of El Paso's Mass Transit Department, for the purpose of the operation of a valet parking lot.

BACKGROUND / DISCUSSION:

Union Valet LLC will provide valet services supporting the downtown businesses on Thursday, Friday, and Saturday from 6pm to 3am. Sun Metro will permit the use of Union Depot Lot #4 for the express use of Union Valet LLC during this period at a rate of \$400 per weekend or \$20,800 per annum.

PRIOR COUNCIL ACTION:

N/A.

AMOUNT AND SOURCE OF FUNDING:

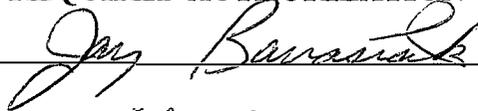
N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Information copy to appropriate Deputy City Manager

CITY CLERK DEPT.

10 FEB -4 PM 1:15

RESOLUTION

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

That the City Manager be authorized to sign a License Agreement by and between the **CITY OF EL PASO**, and **UNION VALET LLC** for the use of City owned property known as Union Depot Parking Lot #4 and managed by the City of El Paso's Mass Transit Department, for the purpose of the operation of a valet parking lot.

ADOPTED THIS ____ DAY OF _____ 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Jay Banasiak, Director
Mass Transit Department

CITY CLERK DEPT.

STATE OF TEXAS)
)
COUNTY OF EL PASO)

10 FEB -4 PM 1:15

LICENSE AGREEMENT

This License Agreement, hereinafter referred to as the "Agreement", is made and entered into on this ____ day of _____, 2010, by and between the CITY OF EL PASO, hereinafter referred to as "the City", and UNION VALET LLC, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, Licensee desires to use a portion of City owned property that is managed by the City of El Paso's, Mass Transit Department, aka Sun Metro, as more fully described below, hereinafter referred to as the "Premises", for the purpose of the operation of a valet parking lot.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
PREMISES AND PRIVILEGES

1.01. Description of Licensed Premises. In return for the consideration described, the covenants and agreements set out herein, the City does hereby permit Licensee's use of the Premises, as more fully described, to-wit:

A portion of 172 Campbell All of FR Block & Triangle (1621 Sq Ft) (52277.1 Sq Ft) City of El Paso, El Paso County, Texas, known as Union Depot Parking Lot #4 and more fully depicted in Exhibit "A" attached hereto and incorporated herein by reference ("Premises").

1.02. Description of General Privileges, Uses and Rights.

Licensee agrees that the use of the Premises is limited to a valet parking facility.

1.03 Restrictions of Privileges, Uses and Rights.

Licensee agrees that the permitted use of the Premises as a valet parking facility is limited to Thursday, Friday, and Saturday evenings between 6:00pm in the evening through 3:00am the following day.

Licensee agrees not to construct any permanent structures, nor place any permanent signage on the Premises without the express written consent of the Director of the Mass Transit Department for the City of El Paso (“the Director”).

ARTICLE II OBLIGATIONS OF THE CITY

2.01. Quiet Enjoyment. The City agrees that upon Licensee’s paying rent and performing all of the covenants, conditions, and agreements herein set forth, Licensee shall and may peaceably and quietly have, hold, and enjoy the Premises for the terms of this Agreement. The City has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Agreement and perform its obligations during the Agreement term and any renewals or extensions thereof.

2.02. Condition and Maintenance of Premises. Licensee accepts the Premises in their condition “AS IS”, with all faults. In accepting the Premises, the Licensee is solely relying on its own inspection and judgment and not in reliance of any representation made by the City. The City shall assume no responsibility as to the suitability of the Premises for Licensee’s intended purpose.

ARTICLE III OBLIGATIONS OF LICENSEE

3.01. Permitted Use. Use of the Premises shall be limited to a valet parking facility on the days and times specifically mentioned herein.

3.02. Improvements. Licensee shall not construct any permanent structures, nor place any permanent signage on the Premises without the express written consent of the Director of the Mass Transit Department. Any permanent structures or signage permitted on the Premises shall be at Licensee’s sole cost and expense.

3.03. Net License. This Agreement shall be without cost to the City. It shall be the sole responsibility of Licensee to:

- A. Keep and maintain the Premises, and any improvements or signage located thereon, in good repair and condition at all times.
- B. Make all required repairs for any damage to Premises caused as a result of Licensee’s use thereof.
- C. Insure that no trash, garbage or refuse remain in the parking facility after 3:00 am each morning after its use.
- D. Tow any vehicles left in the parking facility after 3:00 am.

- E. Pay all costs related to any required re-zoning of the parcel deemed necessary for its intended use as a valet parking facility.
- F. Pay all taxes and governmental charges of any kind whatsoever that may be assessed against the City or the Licensee, with respect to the Premises or any improvements thereon, during the term of this Agreement, including any extensions or option periods.
- G. The Licensee in good faith may contest any tax or governmental charge; provided that the Licensee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City.
- H. Pay all casualty, bond, and liability insurance premiums required by this Agreement.

3.04. Compliance With Laws. Licensee agrees that it will construct, operate and maintain improvements on the Premises in accordance with all applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the City or Licensee, with respect to the use, occupation or alteration of the Premises and any improvements thereon, including any laws applicable to the operation of a parking facility.

3.05. Approval of Plans. The Director's approval of any plans, specifications or working drawings for Licensee's requested improvements, or alterations of improvements, shall create no responsibility or liability on the part of the City for their completeness, design sufficiency or compliance with all laws, rules, and regulations of federal, state, county and municipal authorities. It is specifically understood that the Mass Transit Department is only one of numerous departments of the City and that, in addition to obtaining approval of the Director of the Mass Transit Department; Licensee shall be required to obtain the approval of other departments as required, including but not limited to, the Development Services Department.

3.06. Trash, Garbage, and other Refuse. Licensee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of the Licensee's activities, in a timely manner so as no accumulation of such trash, garbage, or other refuse shall occur.

3.07. Security. Licensee shall be responsible for the security of the Premises at such times as the Premises are permitted to be utilized as a valet parking facility pursuant to this agreement.

**ARTICLE IV
TERM OF LICENSE**

4.01. Term. The term of this Agreement shall be for a period of one (1) year from the date of full execution of this Agreement. Thereafter, this Agreement shall automatically renew for two (2) additional one (1) year terms, unless either the City or Licensee gives the other written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

**ARTICLE V
RENT**

5.01. Rental. The fee for this license shall be **FOUR HUNDRED AND 00/100 DOLLARS (\$400.00)** per weekend, or **TWENTY THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS, (\$20,800.00)** per year, for the use of the Premises. The license fee shall be paid to the Mass Transit Department not later than the first day of each month during the term of this Agreement. Failure to make such payment, or any other fees required herein, will result in termination of this Agreement.

5.02. Place of Payment. All rental payments provided herein shall be paid to the Mass Transit Department at the following address:

Mass Transit Department
700-A San Francisco
El Paso, Texas 79901

**ARTICLE VI
INSURANCE AND INDEMNIFICATION**

6.01. Liability Insurance. Licensee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the City and Licensee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater. Further, Licensee agrees to include the City of El Paso, as owner of the Premises, as an additional insured. A copy of the insurance policy, or certificate, issued by an insurance company authorized and licensed to do business in the State of Texas and reflecting the coverage required herein, shall be furnished to the Mass Transit Department. It is understood and agreed that failure to provide the required insurance or evidence of insurance coverage shall preclude the use of the Premises, as otherwise agreed herein. Licensee does hereby state and warrant that any entity providing services to Licensee fully complies with all workmen's compensation requirements in the State of Texas.

6.02. Authorized Insurance Companies. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by the City. Such policies shall contain:

- A. A statement of the coverage;
- B. A statement certifying the City to be listed as an additional insured;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days prior written notice to the City.

6.03. Indemnification. LICENSEE AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LICENSEE'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LICENSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LICENSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, LICENSEE, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

ARTICLE VII TERMINATION, CANCELLATION AND ASSIGNMENT

7.01. Termination. Termination for convenience shall be permitted by either party, upon thirty (30) days written notice. Termination for cause shall be permitted by either party, upon three (3) days written notice.

7.02. Cancellation. This Agreement shall be subject to cancellation by the City in the event Licensee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after the City has notified Licensee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Licensee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Licensee, and such default continues for a period of thirty (30) days after receipt of written notice from the City to cure such default, unless during such thirty-day period, Licensee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Licensee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

In any of the aforesaid events, the City may take immediate possession of the Premises including any and all improvements thereon and remove Licensee's effects, forcibly if necessary, without being deemed guilty of trespassing.

7.03. Assignment. There shall be no assignment of this Agreement without the prior written consent of the Director and any attempt by Licensee to assign this Agreement without the prior written consent of the Director is void and shall be an event of default which may, at the option of the City, result in termination.

ARTICLE VIII GENERAL PROVISIONS

8.01. No Rights in Realty. Nothing in this Agreement shall be construed as the grant of any other right in realty to the Licensee, its officers or employees.

8.02 Agreement Made in Writing. This Agreement constitutes the entire agreement and understanding between the parties with respect to the use of the Premises. No amendment or modification of the terms hereof shall be binding unless the same shall be in writing and signed by the parties hereto.

8.03 Paragraph Headings. The table of contents and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit or augment the scope, context or intent of this Agreement or any part or parts of this Agreement.

8.04 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there may be added a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

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

8.06 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

8.07 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the City and Licensee and their successors, assigns, legal representatives, heirs, executors and administrators.

8.08 Notices. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
Attn: City Manager

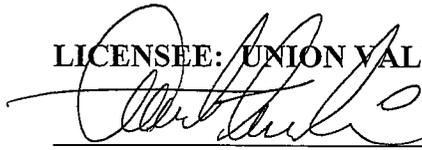
COPY TO: Director, Mass Transit Department
700-A San Francisco
El Paso, Texas 79901

LICENSEE: Union Valet LLC
1640 Golden Hill Tr.
El Paso, Texas 79902
Attn: Mr. Alberto Medina

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this paragraph.

CITY CLERK DEPT.
10 FEB -4 PM 1:15

LICENSEE: UNION VALET LLC

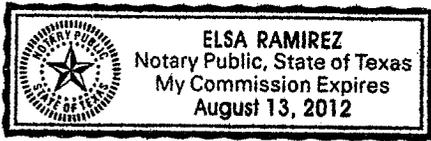


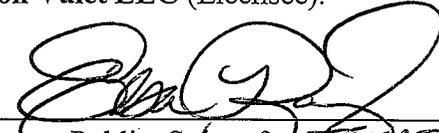
Alberto Medina
Title: President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

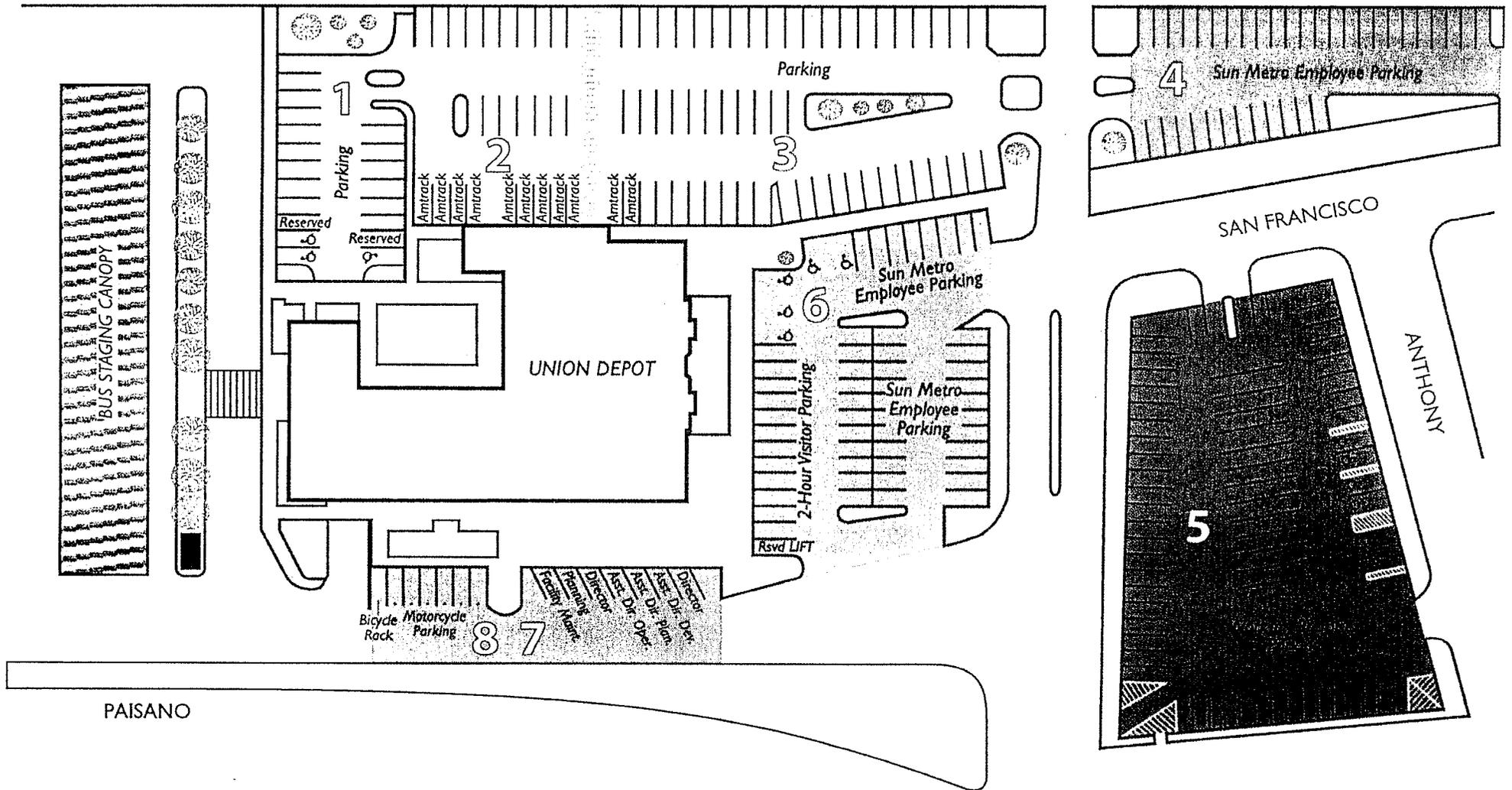
This instrument was acknowledged before me on this 3rd day of FEBRUARY, 2010,
by Alberto Medina as PRESIDENT of Union Valet LLC (Licensee).





Notary Public, State of TEXAS

Union Depot Parking



△ Lot 1: 21 spaces total (2 handicapped, 2 reserved)

▽ Lot 2: 34 spaces total (9 Amtrak)

△ Lot 3: 67 spaces total (2 Amtrak)

▽ Lot 4: 36 spaces total

■ Lot 5: 47 spaces total (6 handicapped)

▽ Lot 6: 59 spaces total (5 handicapped, 1 LIFT)

△ Lot 7: 7 reserved spaces

▽ Lot 8: 6 motorcycle spaces